

**DISPUTE RESOLUTION SERVICE****D00020794****Decision of Independent Expert**

PEARSON EDUCATION LIMITED

and

Online Assignment

**1. The Parties:**

Lead Complainant: PEARSON EDUCATION LIMITED  
80 Strand  
London  
WC2R 0RL  
United Kingdom

Respondent: Online Assignment  
Chandigarh  
Chandigarh  
Chandigarh  
160022  
India

**2. The Domain Name:**

hndassignmenthelp.co.uk

**3. Procedural History:**

I 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 in to question my independence in the eyes of one or both of the parties.

09 November 2018 14:03 Dispute received  
09 November 2018 14:42 Complaint validated  
09 November 2018 15:04 Notification of complaint sent to parties  
12 November 2018 09:57 Response received  
12 November 2018 09:58 Notification of response sent to parties  
15 November 2018 01:30 Reply reminder sent  
19 November 2018 10:41 Reply received  
19 November 2018 10:41 Notification of reply sent to parties  
19 November 2018 10:42 Mediator appointed  
10 December 2018 15:35 Mediation started  
04 January 2019 14:29 Mediation failed  
04 January 2019 14:29 Close of mediation documents sent  
16 January 2019 01:30 Complainant full fee reminder sent  
31 May 2019 11:38 No expert decision payment received  
12 June 2019 02:30 Respondent full fee reminder sent  
18 June 2019 14:20 No expert decision payment received  
18 June 2019 15:49 Dispute opened  
20 June 2019 10:50 No expert decision payment received  
02 July 2019 02:30 Respondent full fee reminder sent  
11 July 2019 15:30 Expert decision payment received

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

The Complainant is a provider of educational qualifications, materials and learning technologies. It provides test development, processing and scoring services to governments, educational institutions, corporations and professional bodies around the world with a range of products and services including student assessments and testing services.

“HND” is well-known in the United Kingdom as an acronym for the “Higher National Diploma”, an educational vocational qualification introduced in the 1920s and currently provided by the Complainant. Since April 2011 the Complainant has been the proprietor by assignment of UK registered trademark HND, No. 2156378A, registered on September 10, 1999 in classes 9, 16 and 41, the latter being in respect of:

“Arranging and conducting examinations, seminars and conferences; designing, setting, conducting, authorising, controlling, examining, and supervising educational courses, examinations, and qualifications; publication of books and texts; teaching services; provision of correspondence courses; certifying and issuing qualifications and examination certificates; all provided in England, Wales and Northern Ireland.”

The Complainant registered the EUIPO mark HND in the same classes on February 6, 2001.

The Domain Name <hndassignmenthelp.co.uk> was registered on July 19, 2015. It resolves to a website displaying the logo:



. The website offers online dissertation writing help.

## **Parties' Contentions**

### **Complainant**

The Complainant says the Domain Name is identical or closely similar to the name/mark HND in which the Complainant has both registered and common law trademark rights. The HND trademark has been continuously used since 1969. Schedule 6 to the Education Reform Act, 1988 identifies a course for the Higher National Diploma as one which, as a result of the application of s.120(1) of that Act, a local education authority was "no longer" under a duty to provide. In consequence, the Higher National Diploma is awarded in England, Wales and Northern Ireland only by the Complainant.

The Complainant says the Domain Name was registered years after the launch of the HND educational programs by the Complainant so the Respondent would have been fully aware of the Complainant's rights in the HND trademark at the time of registering the Domain Name, which resolves to a website whereby those undertaking the Complainant's HND courses can pay the Respondent to provide written assignments for submission as part of their course. In effect, the website is encouraging students to cheat in their studies as they are not completing the coursework themselves and instead, are paying a third party to undertake the work for them. The Respondent's website material also makes clear that the Respondent is and has been fully aware of the Complainant's HND trademark rights and has intended to capitalize on those trademark rights with its dishonest and illegitimate commercial activity.

The Complainant says the Respondent has no authorisation to use the HND trademark. The use of the HND mark in the Domain Name to promote a dishonest business and attract consumers to websites which are not connected to the Complainant violates the Complainant's trademark rights and is clearly an Abusive Registration. Consumers are attracted to a facility that enables and encourages dishonesty and only serves to damage and tarnish the reputation of the HND qualifications of the Complainant.

### **Respondent**

The Respondent says HND Assignment Help is formed with the aim of creating a better resource for students where they can find the pattern and useful information which can allow them to write their assignments. In no way does the Respondent encourage students to indulge in any dishonest behaviour for accomplishing their assignments from us.

The Respondent says it is somewhat surprising to learn that the abbreviated name of a well-known UK qualification since the Domain Name specifies the abbreviation for three co-founders who started the business named Hemant, Naveen and Deepak. It is a mere coincidence that it matches the name of a UK qualification from the Complainant. This has also been notified at the bottom of the website so as to make clarity. In no way does the website encourage anyone to indulge in dishonest behaviour for getting their assignments from us. We have made it strictly clear that we only offer relevant material for their study which can be used for reference purpose only. Please note the remarks at the bottom of the home page and second line of the home page:

“We help academicians, researchers, scientists and several other professionals seeking proficient help to write assignments, dissertations, and essays”

“2018 hndassignmenthelp. All Rights Reserved. HND Assignment Help in domain stands for H-Hemant, N- Naveen and D- Deepak  
We at hndassignmenthelp.co.uk provide assignment help for guidance/reference only. These papers are not to be submitted as it is. These papers are intended to be used for research and reference purposes. Our experts make wide research to collect helpful material for your usage so that students can use them to make their assignments on their own. We strictly do not encourage any student to involve in the dishonest behavior for outsourcing their assignment writing work.”

Moreover, the Respondent says it is not charging any money for offering these services and this can be read through line 3 of our home page at start:

“The reference material offered for helping students is completely free of course and just to allow students to get quality information and prepare their assignments. Since at times we used to be students and were not having so much knowledge to pass our assignments and gain the degree.”

### **Complainant's Reply**

The Complainant says the Respondent has added a notification to the website that 'HND' is being used as the abbreviation of the first name of the three co-founders of the Respondent. This has only just been added. This is the first time ANY reference has been made to the alleged names of the founders on the website in question. It is somewhat unbelievable that the Respondent did not know that HND is the name of a well-known UK qualification, given that the Respondent offers services in respect of writing essays for a number of HND courses.

The Complainant says that even if the initials of the founders are 'H', 'N' and 'D', this does not give them the right to use these letters in an acronym. They are not using their full personal names; they are using the first letter of each name. This does not provide a defence to trademark infringement. The use of the acronym

functions as a badge of commercial origin for their company, infringing the Complainant's registered trademarks. It is irrelevant how the Respondent came up with the name, it still infringes the Complainant's rights.

The Complainant notes the Respondent's claims that in no way does its website encourage anyone to indulge in any dishonest behaviour; that the materials are for study purposes only; and that the work is for reference only by academicians, researchers etc. However, further down the homepage of the website the Respondent also states:

'Assignment help segment of HND Assignment help considers best assignment writers UK in order to deal with UK assignment. Student ask us to do my assignment and we offer assignment writing help to them with assignment service UK. Student can buy assignment from us as our assign services has been termed as best in Assignment help London. Student can connect us for various assignment help terminologies such as assignment assistance, how to write an essay, academic writing, assignment help UK, essay writing help, do my essay, do my homework, essay writing tips, law essay, writing websites, do my assignment, online essay writer, assignment writing help, law essay help, write my assignment, buy paper, buy assignment, academic writing help, academic writing service, research paper, academic essay writing, law essay writing, writing essays, essay online, coursework writing service, writing service, university essay writing, best essays and assignment help UK, write my essay uk, buy essay online, write essay for me, coursework help, assignment writing service UK, uk assignment, buy essay and essay help UK etc.'

As such, the Complainant says it is simply not true that the materials are only offered for reference purposes. This is further verified by the Respondent's website as at November 13, 2018, which also shows that the Respondent also writes dissertations for students (Annexes LAW2 and LAW3). Although the Respondent has added a 'caveat' to the website, this has only just been added as evidenced by the fact this caveat was missing from the website as shown in the original complaint (Annex LAW9). In addition, the caveat is ineffective. Firstly, it is a very small footnote at the bottom of the page, after a significantly large volume of text and information. Secondly, the footnote contradicts the services being offered by the Respondent throughout the entirety of the website and the purpose of the Respondent's business. Therefore, the caveat is of no use to the visitor of the website and would not be noticed.

In reply to the Respondent's claims that it is not charging any money for offering these services and that this can be read through line 3 of the homepage, the Complainant notes that further down the homepage is the statement:

'Not sure about the quality? Using our services First time? We are flexible with our customers. So now, no need to make full payment at first. You can make the half payment and rest of the payment of the assignment can be done later on.'

The Complainant submits that this wording points to the fact that payment has to be made. The 'How it works' section of the website describes the steps as (1) submit assignment topic, (2) make payment by credit card, Western Union, Paypal, Bank transfer or any other option and (3) receive your assignment. The 'Pay Now' section of the website takes you to a PayPal page to make payment. As such, it would seem that the services provided are not free as alleged by the Respondent.

## **5. Discussions and Findings**

To succeed under Nominet's Dispute Resolution Service Policy, the Complainant must prove on the balance of probabilities both that it has Rights in respect of a name or mark that is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent.

Abusive Registration is defined 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 is being or has been used in a manner which took unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

The Complainant has demonstrated that it has long held registered trademark rights in "HND", an acronym for the "Higher National Diploma". The Domain Name comprises the HND trademark, together with the descriptive words "assignment" and "help", which do not detract from the distinctiveness of the HND mark. Rather, those words reinforce the significance of the acronym as a reference to an educational qualification. The ".co.uk" suffixes may be disregarded. Accordingly, I find the Domain Name to be similar to the Complainant's HND mark. The Complainant has established this element.

As to Abusive Registration, I note that the learned Expert in DRS 19183, in considering the domain name <hndassignments.co.uk> in light of the DRS appeal panel decision in *Jaguar Land Rover Limited v Essex Jaguar Spares* DRS 18271 concluded that:

"the addition of the word "assignment" to "HND" is insufficient to make the domain name informative rather than misleading, and thereby prevent a finding of abusive registration. The term "assignment" alone does not sufficiently indicate that the owner of the Domain Name is offering services related to but unauthorised by the Complainants".

Likewise, I find the inclusion in the Domain Name of the words "assignment" and "help" following the Complainant's HNG trademark insufficient to dispel a misleading impression that the Respondent's services are authorised by the Complainant, the only entity regulating and controlling the educational qualification in England, Wales and Northern Ireland.

I note that, as at the date of the Complaint, the Respondent's website made no mention of the initials of the three founders of the business, Hemant, Naveen and Deepak, and made no statements to the effect that the Respondent's services were provided free of charge nor that dishonest behaviour was discouraged. All such statements appear to have been added after the Respondent was notified of the Complaint.

The following are extracts from the website to which the Domain Name resolved on November 7, 2018, two days before the Complaint was notified to the Respondent (Complaint Annex Law 9):

"HND Assignment Help

- Plagiarism Free Work
- Best Price Guidance
- Deadline Guarantee

We are among the leading online dissertation writing company with more than 500 dissertations delivered in last 2 years of time span and helped students accomplish their degree with high grades...

...Provide dissertation help with most affordable range so that it does not affect the pocket [sic] expense for the students...

...  
?

#### PART PAYMENT OPTION

Not sure about the quality? Using our services First time? We are flexible with our customers.

So now, no need to make full payment at first. You can make the half payment and rest of the payment of the assignment can be done later on."

These extracts, together with those cited by the Complainant in its Reply, satisfy me on the balance of probabilities that the Respondent has used the Complainant's trademark HND on its website in connection with the educational qualification, not as a reference to the initials of its founders, and that, having regard to the content of the website, the Respondent has used the Domain Name to mislead students into believing they were visiting a website approved by the Complainant and thereafter to encourage students to cheat by paying the Respondent to arrange for their essays and other dissertations to be written for them.

Accordingly, I am satisfied that the Domain Name has been used in a manner which took unfair advantage of and has been unfairly detrimental to the Complainant's Rights. Since such use amounts to Abusive Registration, it is unnecessary to come to a conclusion as to whether the Domain Name was an Abusive Registration when it was registered in 2015, although it is indeed unlikely that the Respondent was unaware of the Complainant and its trademark rights at that time. The Complainant has established this element.

**6. Decision**

For the reasons set out above, I determine that the Domain Name <hndassignmenthelp.co.uk> be transferred to the Complainant.

**Signed**      Alan Limbury

**Dated: July 31, 2019**