

DISPUTE RESOLUTION SERVICE

D00027310

Decision of Appeal Panel

iManage LLC

and

David Garforth-Bles

1. The Parties:

Lead Complainant: iManage LLC
71 South Wacker Drive
Chicago
Illinois 60606
United States

Complainant: iManage EMEA Limited
Suite 1, 7th Floor, 50 Broadway
London
SW1H 0BL
United Kingdom

Respondent: David Garforth-Bles
[address redacted for privacy]

2. The Domain Name:

The domain name at issue is manage.co.uk (the “Domain Name”).

3. Procedural History

This is an appeal against the summary decision of Dawn Osborne (the “Expert”) dated 2 January 2025 (the “Decision”) in favour of the Complainant.

Nick Gardner, Ian Lowe and Claire Milne (together, “the Panel”) have each made a statement to the Nominet Dispute Resolution Service in the following terms:

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

For convenience the Panel will continue to refer to the parties as the “Complainant” and the “Respondent”.

4. The Nature of This Appeal

This Complaint and Appeal fall to be determined pursuant to Nominet’s Dispute Resolution Service Policy, version 4 (the “Policy”). Definitions used in this decision have the same meaning as set out in the Policy unless the context or use indicates otherwise. In accordance with paragraph 20.8 of the Policy, the Panel has considered the Appeal on the basis of a full review of the matter and a re-determination on the merits. In doing so, it has taken into account the persuasive value of previous appeal decisions (pursuant to paragraph 20.12 of the Policy) and has drawn on relevant sections of the Experts’ Overview (version 3) published on Nominet’s website.

5. Formal and Procedural Issues

The Complaint was filed on 18 December 2024. There was no Response to the Complaint and the Expert’s summary decision directing the transfer of the Domain Name was issued on 21 January 2025. That decision noted that “the Respondent has altered its use of the Domain Name, namely registered subdomains that mimic the Complainant’s trade mark or appear to have been created for fraudulent purposes”. The Appeal Notice was lodged on 25 March 2025 and an Appeal Response lodged by the Complainant on 8 April 2025. The Panel was appointed on 8 April 2025.

As follows from there having been no Response to the Complaint, the Appeal Notice contained new material which, as explained below, the Panel considered should be admitted. However, on 15 April 2025, the Panel issued an invitation to the Respondent, if he were willing to do so, to provide a signed statement confirming that the contents of the Appeal Notice were to the best of his knowledge true. The Respondent did provide such a signed statement. In addition, on 22 April 2025, he submitted additional submissions and evidence stated to respond to new arguments and evidence contained in the Appeal Response but not included in the Complaint.

The Panel agreed to accept this additional material and gave the Complainant permission to file a further submission in answer. The Complainant filed an additional submission on 13 May 2025 in which it accepted that the new evidence from the Respondent supported the Respondent's case and sought to withdraw the Complaint, but submitted that the Complaint had been made in good faith.

On 15 May 2025, the Respondent sought to file a further submission, but the Panel declined to admit it, indicating that notwithstanding the Complainant's request to withdraw the Complaint it proposed to render a decision, the Respondent having indicated that it wished the Panel to render a decision.

The Appeal is against a summary decision. An appeal by a respondent against a summary decision is possible, although in practical terms a respondent who chose not to respond to the original Complaint is likely to have to show on appeal that there are good reasons why such an appeal should be entertained – see *Tumblr Inc. v Paul Guerin* DRS 11211 (tumblr.co.uk) for a discussion of the relevant considerations. In the present case, the Panel accepts the Respondent's evidence as to why he did not deal with the Complaint and considers that it is in the interests of justice that new material contained in the Appeal Notice should be admitted. This conclusion is clearly correct given the Complainant now concedes that the Domain Name is not an Abusive Registration (see below).

6. The Facts

It is convenient at this stage to note that as matters have developed during the course of this Appeal the Complainant's position has changed. It now accepts that the registration of the Domain Name is not abusive and suggests that the Complaint should be withdrawn. See further below.

The first Complainant iManage LLC ("iManage") is an international business and software company, headquartered in the U.S., and operating all over the world, including in the United Kingdom.

The second Complainant iManage EMEA Limited ("iManage UK") is a wholly owned subsidiary of iManage LLC and is incorporated in the UK. It represents the iManage business and software in the UK, it employs those individuals who represent the iManage business and software in the UK, and it conducts iManage's business in the UK, including providing sales and software support services for the iManage computer software and related services in the UK. In practical terms nothing turns on the distinction between the two Complainants who are referred to collectively as the "Complainant" in this decision.

The Complainant has a number of registered trade marks for the term IMANAGE, including European Union trademark number 001771419 IMANAGE registered on 8 January 2002 and the comparable United Kingdom trademark number 00901771419, created following the United Kingdom's exit from the European Union and also treated as registered on 8 January 2002; and European Union trademark number 015606379 iMANAGE registered on 27

December 2016 and the comparable United Kingdom trademark number 00915606379 similarly created and treated as registered on 27 December 2016. These are referred to as the “IMANAGE” trade mark in this decision.

It is not in dispute that the Complainant operates on a global basis providing industry-leading document management software (“DMS”) for businesses and law firms, including in the UK. IMANAGE software is popular and recognized in the relevant market and globally. For example, 37% of Fortune 100 companies use IMANAGE software, over 1 million professionals use IMANAGE software every day, and over 2,500 of the world’s law firms use IMANAGE software.

The Respondent is a chartered surveyor with some 40 years’ experience. He registered the Domain Name in or around 1997 along with a number of other domain names corresponding to dictionary words. The Domain Name has never been substantively used by the Respondent. It has been parked with Sedo since about 2007.

7. Parties’ Submissions

The Complaint

The Complainant made the following submissions in its Complaint.

It has Rights in the term IMANAGE.

The Domain Name is similar to the term IMANAGE in that it differs by only one letter. It says that domain names that merely remove or add a single letter from or to a trademark do not distinguish the domain name from the mark. It refers to previous DRS decisions in this regard, as follows. *Equifax Inc. v. Marcel Nyman*, DRS 024991 (<eqifax.co.uk> similar to EQUIFAX mark); *Rightmove Group Ltd. v. Jurgen Neeme*, DRS 024715 (<righttmove.co.uk> similar to RIGHTMOVE mark).

The Complainant says that it has used the term IMANAGE in connection with computer software and related services since at least October 1995. It says that in addition to the IMANAGE trade mark it also owns common law rights to the term IMANAGE by virtue of its substantial and continuous use of that mark in connection with software and related goods and services.

The Complainant does not say that the Domain Name in the hands of the Respondent was abusive when it was registered. The Complainant relies rather on the manner in which it says the Domain Name has subsequently been used. Specifically the Complainant relies upon the way in which it says subdomains have been configured in relation to the Domain Name.

It says as follows. “Complainant has obtained evidence that Respondent configured a subdomain for the challenged <manage.co.uk> domain name that contains the name of one of Complainant’s large clients: the Freshfields global law firm, which is headquartered in

London, England. More specifically, Respondent has configured the subdomain <freshfields-work.manage.co.uk> This mimics the legitimate subdomains that Complainant uses to service its Freshfields client, including <freshfields-europe.imanagework.co.uk> There would be no valid reason for Respondent to create a subdomain containing the “freshfields” name unless Respondent has used or intends to use the <manage.co.uk> domain name to deceive Freshfields’ personnel into believing the subdomain is associated with Complainant. With such deception, Respondent can fool Freshfields into providing information or payments to Respondent as part of Respondent’s scheme of enriching itself through social engineering cyber-fraud. Because the “Freshfields” name is so unique, and Complainant is best known for providing document management software for law firms, there can be no other explanation for configuring such a subdomain”.

It goes on to say “Complainant also has obtained evidence that Respondent added the “i” prefix to the disputed domain name to configure the subdomain <i.manage.co.uk> ... This further evidences Respondent’s use of the domain name to mimic Complainant’s IMANAGE mark as part of a spoofing scheme to deceive Complainant’s law firm clients. Indeed,... Complainant configured the <i.manage.co.uk> subdomain on the same date that it configured the “freshfields” subdomains: October 23, 2024. So this is no coincidence and evidences an intentional scheme to confuse employees at Freshfields into thinking that the subdomains are associated with Complainant. Indeed, Complainant has been repeatedly targeted by such spoofing and phishing scams because it is known that Complainant’s law firm clients receive invoices from Complainant and pay them by EFT/ACH, which is the type of payment and billing process that such fraudsters use confusingly similar domain names to exploit with phishing and spoofing scams”.

The Complainant goes on to make the following further points.

The Respondent’s name is not <manage.co.uk>, and it is not commonly known by that name or a similar name.

The Complainant has not licensed or otherwise permitted the Respondent to use the IMANAGE trade mark, or any similar variation of it.

The Respondent is not using the <manage.co.uk> domain name to operate a legitimate website, but instead has parked the domain name with Sedo, which provides pay-per-click links to browser searches to other businesses, including software services. It relies upon the decision in *ZipRecruiter Inc. v. Weng Licheng*, DRS 025632 (use of <zipecruiter.co.uk> domain name that omitted letter “r” from ZIPRECRUITER mark, that resolved to a page that provides “pay-per-click links”, was typosquatting and evidenced abusive registration).

It says the Respondent has concealed its identity as the registrant from the WHOIS record, and refers to the decision in *Rightmove Group Ltd. v. Jurgen Neeme*, DRS 024715 (finding abusive registration where Respondent “took pains to conceal his true identity,” including a redacted registrant name in the WHOIS record).

The Response

No response was filed. It subsequently emerged that because of medical problems the Respondent did not deal with the hard copy complaint he received, and his email details were not updated properly so he did not receive an electronic copy of the Complaint.

Respondent's Appeal Notice

The Appeal Notice makes the following points.

The Respondent says he is a chartered surveyor with over 40 years' experience. He is not a professional domain investor. He owns 11 generic domains, registered in or around 1997, including <manage.co.uk>.

The Respondent exhibits his CV which the Panel considers to be of relevance. It shows he attended Rugby School between 1967 and 1971, then served a short service commission in the British Army. He then studied law and land management at Cambridge University and from 1980 onwards was a chartered surveyor working for a number of well-known property and surveying firms, until 1991 when he commenced work as a surveyor on his own account. He obtained an MSc from City University in 2002. He is a Fellow of the Royal Institution of Chartered Surveyors and an Associate of the Chartered Institute of Arbitrators. He is a past President of the Cambridge University Land Society and a retired Treasurer of an organisation called Christians in Property. The Panel infers from this CV that he is somewhere in the region of 70 years old.

The Respondent says he was very unwell at the time the Complaint was sent to him. He has provided details of his medical issues in his Appeal Notice but the Panel does not propose to repeat them here. Although he accepts he received a hard copy of the Complaint, he says it arrived when he had these medical issues and he does not remember receiving it. He did not open the letter.

He says the email account as shown on the WHOIS for the Domain Name was inactive. He updated his email with his registrar but it had not been passed on to Nominet. As a result he did not receive the Complaint by email.

The Respondent asks the Panel to exercise its discretion under paragraph 20.8 of the Policy to allow the limited amount of new attached evidence "in the interests of justice"; and under paragraph 20.9 under their discretion to "consider non-standard submissions".

The Respondent relies upon the DRS Appeal decisions in relation to <oasis.co.uk> and <philosophy.co.uk>.

So far as the Complainant's Rights are concerned the Respondent says as follows.

He accepts that the test for rights under the Policy is a low bar. But he says the Complainant does not have rights that even satisfy the test of being "identical or similar to the Domain Name". He says the term iManage is neither identical nor similar to the Domain Name. In

this regard he says that the Complainant's trademarks were recently analysed in their failed UDRP complaint regarding the domain name <imanagework.com>, where the respected panelist found that the iManage trademark "sits at the lower end of the spectrum of distinctiveness". The Respondent relies on that case generally.

The Respondent says the Domain Name is the widely used common English word manage and points out that the Complainant uses lowercase "i" followed by uppercase "M" to differentiate its trademark iManage.

The Respondent says the cases cited in the Complaint are easily distinguished from the present case. They are obvious typosquats, with a single letter added or removed in the middle of the word, resulting in a homophone with the same number of syllables. In contrast, iManage has the lowercase "i" before the word – creating a very different look and sound to "manage". The Respondent says that use of a lowercase "i" is common in branding – e.g. iPhone, iPad, iTunes, iHeartRadio - many of the world's most well-known brands use this structure in which "i" is used to indicate "internet", "individual" or an association with technology. Thus, for example, "iPhone" is clearly different from "phone". One is a trademark, the other a common English word. The same applies to "iManage" and "manage". They are distinct and different. They are certainly not similar enough to entitle the owner of the iManage trademark to claim rights to the word "manage".

The Respondent submits that where a disputed domain name is a generic word, the Complainant must establish that their use of the word has created a strong secondary meaning, if it seeks to claim that the domain name was registered or used abusively. In this regard the Respondent relies on DRS Appeals in relation to the domain names <maestro.co.uk> and <mercer.co.uk>. The Respondent says the conclusion in relation to <maestro.co.uk> applies even more here - "Where a domain name is a single ordinary English word, the meaning of which has not been displaced by an overwhelming secondary meaning, the evidence of abuse will have to be very persuasive, if it is to be held to be an Abusive Registration under the DRS Policy." The Respondent says the trademark in <maestro.co.uk> was identical to the domain name and far more widely known.

The Respondent denies knowing about the Complainants or their alleged rights until informed of this Complaint.

The Respondent says that the Complainant claims use of iManage from 1995 but provides no evidence to support that, despite being represented by a large American law firm. That claim is denied. He also says that further claims about the size of the Complainant's business are not supported by any evidence and are denied.

The Respondent denies creating the subdomains relied upon. He says he did not even know what a subdomain was. Having now investigated this, he says that third-parties can type in a subdomain to a domain and create a digital certificate of the kind relied upon by the Complainant. He exhibits an email that Sedo sent to the Respondent's legal adviser which reads as follows: "We're disappointed to hear that your client is facing a dispute regarding their domain manage.co.uk. Regarding subdomains, what I can tell you is that Sedo's domain parking hosting servers do not support customer created website content, subdomains,

downloads, or email services. If an end user types a subdomain of a parked domain in their browser or otherwise clicks on a link containing a subdomain of a parked domain, Sedo's servers will deliver the same domain parking template page as the domain itself".

The Respondent says that the Expert's decision has attracted criticism because of the fact that third parties can create subdomains. He exhibits an example which appears to show that a third party created <batshitcrazy.manage.co.uk>. He says that, ironically, the Complaint contains what he describes as the sort of error that could do this, and refers to the statement that "Complainants provide services to clients in the UK at least through websites at www.imanage.com and www.imanage.work.co.uk...", which he says shows that the complainant created a subdomain for work.co.uk, a domain name which is not owned by them.

The Respondent asks for a finding of Reverse Domain Name Hijacking as this is a bad-faith attempt to abuse the DRS.

The Appeal Response

In the Appeal Response the Complainant says that the Expert was correct. It submits that the Respondent does not rely on any of the factors listed in paragraph 8.1 of the Policy that may be evidence that the Domain Name is not an Abusive Registration.

The Complainant maintains that only the Respondent with DNS control of the Domain Name could have created the subdomains relied upon, that the "Respondent's self-serving theory" that a third party might have done so "is a fantasy" and points out that the Respondent offers no plausible third-party motive for typing those subdomains into a browser. "Only the person with control of the domain name, the Respondent, benefits by mimicking Complainants, likely for phishing purposes."

The Complainant further relies on the fact that although the Respondent asserts that the Domain Name has been parked with Sedo since 2007, the 2020 DNS Mail Exchanger records show email hosting at mail.pickelhost.com which is inconsistent with passive parking. Furthermore, its threat detection software reveals that the Respondent made DNS changes in 2017-2019 from Sedo to Akamai Technologies, Inc, two of whose IP addresses have been flagged for malicious activity.

The Complainant does not accept that it must prove "secondary meaning" for its IMANAGE mark to support its claim of similarity to the Domain Name.

Respondent's Supplementary Filing

The Respondent's additional submissions strengthen the points in the Appeal Notice and address the Complaint's Response, with documentary support as shown below. The main points made are:

- The Respondent has not created any subdomains of <manage.co.uk>; rather, the certificates put forward as evidence by the Complainant were created automatically

by people typing into web browsers words of their choice before <manage.co.uk>. Annexes 1b) and 2 are evidence that this practice is supported by Sedo and another parking provider, and Annex 3 that it has happened many times with the Complainant's own domain names.

- The Respondent has not created a mailserver, as alleged by the Complainant. Annex 4 shows that the alleged home of the supposed mailserver, <pickelhost.com>, was not easily accessible to ordinary web users. The Complainant's observations in regard to apparent use of the Domain Name for email can be explained by Sedo's use of Akamai services (Annexes 1a) and 5).

These additional submissions include evidence in Annexes as follows:

1. Sedo Statement 15 April 2025 (2 pages) that a) at relevant times, traffic to non-existent email addresses could have resulted in an MX record and/or the use of Akamai DDoS protection services for the prevention of cyberattacks on Sedo hosting servers and b) third party attempts to access a subdomain of a parked domain may result in the automatic creation of a certificate for that subdomain, without any corresponding webpage being created.
2. ParkingCrew Webpage (1 page) showing similar practice to Sedo's described at 1b), by another parking provider.
3. Certificates issued on imanage.com and cloudimanage.com (87 pages): copied from crt.sh, certificates for some 2,000 such subdomains, created mainly in 2024 and early 2025 but with a few going back to 2018.
4. pickelhost.com webpage error message (1 page) dated 22 April 2025, stating that <pickelhost.com> could not be reached.
5. Sedo's Privacy Policy Reference use of Akamai Technologies (15 Pages) at 9(l) confirms Sedo's use of Akamai for both content delivery and DDOS protection services.
6. Archive.org results for dates cited in Appeal Response (4 pages) showing that manage.co.uk was hosted by Sedo (with no content shown) at 3 dates in 2018 and one in 2017. This supports the Respondent's claim that the Domain Name had been hosted by Sedo (which therefore had DNS control) throughout the period in question, contrary to the Complainant's allegation that the Respondent had (and misused) DNS control.

Complainant's Supplementary Filing

The Complainant's response to the Respondent's supplementary filing accepts that the additional argument and evidence provided shows that the registration is not abusive, and should remain with the Respondent. It seeks to withdraw the Complaint.

It also claims that it made the Complaint in good faith, citing as evidence:

- A number of successful domain name complaints that it has made in the past against other parties.
- The Domain Name having been brought to their attention by their Threat Detection Service.
- The Respondent's initial failure to respond to the Complaint, leaving the Complainant in ignorance of the reasons for this failure.
- Its view that the evidence first provided by the Respondent at appeal was questionable.

8. Discussion and Findings

General

Pursuant to paragraph 2.1 of the Policy, the Complainant must prove in relation to the Domain Name, 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.

Rights and Similarity

Under the Policy the Rights to be proven by the Complainant must be *"rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning"*.

The Complainant owns various registered trade marks for the term "imanager" (see above) and those plainly amount to Rights in that term. The question as to whether that term is similar to "manager" is not straightforward. The Panel agrees in large measure with the points made by the Respondent. The other cases relied upon by the Complainant involving the addition or removal of a single letter are not really on point as they involve an addition or removal of a letter in the middle of the word in question and result in a term which could easily be mistaken for the word in question. The practice of adding an "i" at the front of a word is common and produces a term which is recognisably different and which may have a distinct and separate meaning - as in the cases the Respondent points to such as "iphone" and "phone".

It is however generally accepted that the test under paragraph 2.1.1 of the Policy is a low threshold intended to establish that a complainant has proper standing to bring a complaint. It would in the Panel's opinion be odd if one of the allegations made by the Complainant was true, namely the creation and possible fraudulent misuse of a subdomain i.manage.co.uk, if the owner of a trademark for imanager was not able to bring a DRS complaint.

Accordingly, the Panel concludes that notwithstanding the different impression created by use of an initial "i" there remains a similarity between the Complainant's trade mark and the

Domain Name by virtue of the Domain Name containing all the remaining letters of the trademark, omitting only the initial “i”. The Panel notes in this regard that paragraph 2.1.1 of the Policy requires merely that the Complainant’s name or mark is “similar” to the Domain Name and not that it is “confusingly similar”.

Accordingly, pursuant to paragraph 2.1.1 of the Policy, the Panel finds that the Complainant has Rights in respect of a name or mark that is identical or similar to the Domain Name.

Abusive Registration

Paragraph 1 of the Policy contains the following definition:

“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”.

A complainant is only required to establish either (i) or (ii) in order to succeed – it does not need to establish both. The focus of the Appeal Notice is the second limb.

Registration of the Domain Name

No allegation was made that the registration of the Domain Name was an abusive registration. Given that the registration of the Domain Name predates the Complainant’s registered trade marks, and there is no real evidence supporting the Complainant’s claim to have used the term iManage prior to the date the Domain Name was registered, this is perhaps not surprising.

Accordingly the Panel concludes that the registration of the Domain Name does not amount to an Abusive Registration.

Use of the Domain Name

The second limb of Abusive Registration relates to the use which has been made of the Domain Name by the Respondent since 2013. Has this use taken “unfair advantage of” or been “unfairly detrimental to the Complainant's Rights”?

The Complainant’s entire case in this regard was predicated on the allegation that the Respondent had created subdomains that were likely to be intended for fraudulent use – in particular freshfields.manage.co.uk and i.manage.co.uk. It is important to note that there was no allegation or evidence that these subdomains had ever been used for anything, whether fraudulent or not. It was only their existence which was said to give rise to the

allegation of an Abusive Registration. This relied upon the further allegation that only the Respondent as the registrant of the Domain Name would have been able to do this.

There are in the Panel's opinion a number of serious problems with these allegations and how they have been dealt with. These are discussed below in relation to RDNH. In any event the allegations have now been withdrawn and the Complainant accepts that the creation of these subdomains was nothing to do with the Respondent.

In this regard paragraph 5.1 of the Policy provides a non-exhaustive list of circumstances where use may lead to a finding of Abusive Registration. None of these are applicable in the present circumstances.

As indicated above the Complainant has now withdrawn its allegation that the subdomains in question were created by the Respondent. The questions of who did create them, how this was done, and for what purpose, are not ones that the Panel can answer but do not need to be resolved for the purposes of this Appeal.

Accordingly, the Panel concludes that the use that has been made of the Domain Name by the Respondent has not taken unfair advantage of or been unfairly detrimental to the Complainant's Rights. It follows that the Domain Name is not an Abusive Registration by reason of such use.

9. Reverse Domain Name Hijacking

The Respondent requests a finding against the Complainant of Reverse Domain Name Hijacking (RDNH).

The Policy provides that RDNH "means using the DRS in bad faith in an attempt to deprive a Respondent of a Domain Name".

There are a number of aspects as to how the case against the Respondent has been brought or progressed which the Panel regards as unsatisfactory.

First, the case against the Respondent was predicated on technical evidence about the existence and operation of certain subdomains. That technical evidence was not straightforward and ought in the opinion of the Panel to have been supported by independent expert evidence. The Panel does not know, but suspects that such evidence would have revealed that the assumptions being made by the Complainant were not necessarily correct.

The Complainant's own evidence showed a large number of subdomains associated with the Domain Name, including for example testing.manage.co.uk; stage.manage.co.uk; account.manage.co.uk; addons.manage.co.uk; radius.manage.co.uk; store.manage.co.uk and so on. These do not obviously appear intended for fraudulent use and should have alerted the Complainant to question more closely what was occurring.

Although the Respondent's details were originally protected by a privacy service, the Complainant obtained his details from Nominet in the course of preparing the Complaint. The Respondent has a relatively unusual name. The Panel does not know what (if any) enquiries the Complainant made about the Respondent once it knew his name and address, but the Panel considers it could and should have carried out at least some simple online searches. Had it done so it would readily have located information as to the Respondent's CV – see for example <https://www.culandsoc.com/forums/past-presidents-council/>. This would have provided information similar to that described above as to the Respondent's CV.

That CV in the Panel's opinion describes an individual who is an unlikely candidate for being the perpetrator of a dishonest and fraudulent phishing operation directed at a specific law firm. Such a search should have alerted the Complainant to the possibility that its case was misconceived. At this point the Complainant could and should have written to the Respondent seeking further information. Of course the Respondent's medical problems (above) may have meant that such a letter would not have been dealt with, but the Complainant's failure to take this step, given the factual position described above, is lamentable.

Instead the Complainant proceeded to file the Complaint and in due course the Expert accepted the Complainant's arguments as to likely fraudulent use of subdomains and ordered the Domain Name transferred to the Complainant. The Respondent subsequently filed the Appeal Notice and then, at the Panel's request, verified its contents by a statement of truth. At that point it seems to the Panel that the Complainant should have again appreciated its case could well be flawed. It had the Respondent's CV. It had his categorical statements that he had not created the subdomains relied upon and did not know how to do so. It also had a statement from Sedo that "Sedo's domain parking hosting servers do not support customer created website content, subdomains, downloads, or email services". It had no evidence that any of these subdomains had ever actually been used.

The Panel considers that at this point the Complainant should have conceded that its case was misconceived. At the very least it should have belatedly sought expert technical evidence as to whether its assumptions (that the Respondent must have created the subdomains) were correct. It does not appear to have done so. Instead it decided to "double down" on its allegations and filed an Appeal Response which (1) asserted technical issues as fact without any expert evidence in support (e.g. "Well-established technical fact confirms only the domain owner can create subdomains and certificates"); and (2) expressly accuses the Respondent of dishonesty (e.g. "His lack of overt usage of the domain name suggests profit motives beyond the miniscule parking revenue he identifies, likely via clandestine and abusive phishing").

The Appeal Response also introduced new technical allegations, again unsupported by expert evidence, as follows: "Respondent's other claims further undermine his credibility. First, he asserts the domain has been parked with Sedo since 2007 (Notice ¶ 34, 35, 38), but 2020 DNS MX records show email hosting at mail.pickelhost.com, which is inconsistent with passive parking. (Annex B; Appeal Annex H, I.) Second, Complainants' threat detection software reveals that Respondent made DNS changes in 2017-2019 from "Sedo" to "Akami [sic] Technologies, Inc.," and worse at least two of those Akami IP addresses were flagged for

malicious activity during the time the domain name was using those IP addresses. (Appeal Annex J, K.)” In fact the Respondent’s subsequent evidence answering these allegations showed there was likely a perfectly innocent explanation for these matters arising from technical details as to how Sedo’s parking system operates.

It was only after the Respondent was put to the time and cost of rebutting all of this material that the Complainant finally conceded that the registration of the Domain Name was not abusive, and that the Respondent had not done anything wrong.

Taking all of this into account the Panel concludes that the Complainant has used the DRS in bad faith in an attempt to deprive the Respondent of the Domain Name and accordingly makes a finding that Reverse Domain Name Hijacking has occurred.

The bad faith arises because of the repeated reliance on assumptions which lacked proper technical support, the refusal to consider alternative evidence, and the continued insistence that the Respondent was acting dishonestly when the cumulative effect of the evidence was to suggest that was extremely unlikely. This is the only censure the Panel can apply under the Policy. The Panel notes that the Respondent is a private individual. The Complainant is a large and successful corporation operating on an international basis. The Respondent has incurred Nominet’s appeal fee and legal costs. The Panel considers it was entirely understandable that he engaged legal support, given that the Expert’s decision included what was in effect a finding of dishonesty against him. The Panel has no power to order the Complainant to pay the Respondent’s costs. It does however have the ability to invite the Complainant voluntarily to pay those costs and considers the Complainant should do so. It would also in the Panel’s opinion be appropriate for the Complainant to issue an apology to the Respondent.

10. Decision

The Panel concludes that the Complainant has Rights in a mark which is identical or similar to the Domain Name but has failed to establish that the Domain Name is an Abusive Registration. Accordingly, the Panel allows the appeal and rules that the Domain Name should be retained by the Respondent. The Panel finds that the Complainant has used the DRS in bad faith in an attempt to deprive the Respondent of the Domain Name and accordingly makes a finding that Reverse Domain Name Hijacking has occurred.

Signed

Nick Gardner

Date: 27 May 2025

Signed

Ian Lowe

Date: 27 May 2025

Signed

Claire Milne

Date: 27 May 2025