

Nominet UK Dispute Resolution Service

DRS 03971

CHASTITYUK.CO.UK

Decision of Independent Expert

1. Parties

Complainant: Miss Elizabeth Finnis
Country: GB

Respondent: Ms Stephanie Taylor
Country: GB
Email: Stephanie@passion8.com

2. Domain Name

2.1 chastityuk.co.uk

3. Procedural Background

3.1 The Complaint was entered onto the Nominet system and validated on 7 September 2006. The complaint papers were sent to the Respondent on the same day. The Response was received on 29 September 2006 and hard copies on 2 October 2006. A Reply was received on 17 October 2006. The Complainant paid the required Nominet fee on 31 October 2006 and on 7 November 2006 the Expert was appointed.

4. Outstanding Formal/Procedural Issues

4.1 This case has been fully contested, involving a complaint, response and reply. The Complainant has also made a non-standard submission. In accordance with Rule 13(b) of the DRS Procedure, it is a matter of discretion for the Expert as to whether he wishes to see the non-standard submission.

4.2 The explanatory paragraph in relation to the non-standard submission states that certain of the annexes submitted by the Respondent carry on the rear-side of the copies manuscript dating information not visible on the copies. The Complainant has argued that these dates are relevant to showing the Respondent's knowledge of the Complainant and its business before the Respondent registered the Domain Name. In accordance with the Expert's discretionary power under Rule 13(b), I have received for the annexes to be

supplied complete with the manuscript date markings. Ultimately, the dating on the additional documents received did not help me in coming to a decision.

5. The Facts

- 5.1 The Domain Name was registered by the Respondent, Ms Stephanie Taylor, on 20 August 2005.
- 5.2 The Complainant, Miss Elizabeth Finnis, operates a website at the URL www.chastity-uk.co.uk. In this Decision, I will refer to the website at www.chastity-uk.co.uk as the "Complainant's Website". The Complainant's Website contains a repository of information in relation to chastity belts and devices. The site contains sections explaining "what is chastity" and a guide to choosing male and female chastity devices. Also featured are reviews of commercially available chastity devices, principally those intended for men. Whilst the site itself does not have the facility to offer on-line purchasing, it does contain links to commercial suppliers of chastity devices.
- 5.3 The Complainant also has a commercial interest in a business trading under the name Tickleberry that sells chastity devices. The products offered by Tickleberry are promoted through the Complainant's Website along with products promoted by a variety of other suppliers.
- 5.4 The Complainant registered the domain name [chastity-uk.co.uk](http://www.chastity-uk.co.uk) on 1 December 2000.
- 5.5 The Respondent is the Chief Executive of NE Services Limited ("NE"). NE trades as "passion8.com". The website at www.passion8.co.uk is a commercial website selling a range of lingerie, vibrators, sex toys and videos. The website also sells chastity devices.
- 5.6 The website at the URL www.chastityuk.co.uk (the "Respondent's Website"), is a site that promotes and sells, amongst other things, chastity devices.

6. The Parties' Contentions

The Complainant

- 6.1 The Complainant asserts that she has Rights in the name "Chastity UK" as a result of the use of this name in the domain name ([chastity-uk.co.uk](http://www.chastity-uk.co.uk)) for the Complainant's Website and as a result of the use of the "Chastity-UK" and "Chastity UK" name which is used on the Complainant's Website. The Complainant states the Complainant's Website was first operative on 14 January 2001. The Complainant states that the Complainant's Website is well visited and has supplied an Appendix which the Complainant states is a record showing, amongst other things, unique visitors between February and September 2006. These figures (covering the period for which the Complainant says she has figures) show monthly unique visitors of between 3,299 and 48,437 per month.

- 6.2 The Complainant states that since its launch, the Complainant's Website has received regular contributions and photographs from its "viewers", including manufacturers wishing to announce new products knowing what a good advertising platform "Chastity UK" is. The Complainant states that she makes no financial charge for this as the information submitted by the manufacturers is of interest to her website visitors.
- 6.3 The Complainant does not assert any registered trade mark rights.
- 6.4 The Complainant says that the Domain Name is an Abusive Registration in the hands of the Respondent for the following reasons.
- (a) the Domain Name was chosen to be just one character different to the Complainant's domain name (the difference being the omission of a hyphen);
 - (b) the Complainant asserts that evidence of Abusive Registration can be found from claimed plagiarism by the Respondent of material from the Complainant's Website; and
 - (c) that the Respondent is benefiting financially by confusing and misleading internet users into believing that chastityuk.co.uk and its products is or is associated with or is endorsed by the Complainant's Website, chastity-uk.co.uk.
- 6.5 The Complainant contends that the Respondent registered the Domain Name in the full knowledge of the Complainant's Website and business and did so specifically with the intention of taking unfair advantage of the Complainant's Website's reputation in order to pass herself off as "Chastity UK".

The Respondent

- 6.6 The Respondent admits that the Domain Name is identical to the Complainant's domain name (chastity-uk.co.uk) except for the omission of the hyphen. The Respondent, however, states that the term "chastity" is wholly descriptive of the Complainant's business and that the term "chastity" is descriptive of the goods and services offered by the Complainant.
- 6.7 The Respondent states that the Complainant's case is akin to the Complainant seeking Rights to the term "fishing" while selling fishing rods.
- 6.8 The Respondent states that there can be no confusion because the website at www.chastityuk.co.uk is "...a 100% e-commerce site. It is designed purely for profit. It is also clearly marked that the site is owned by NE Services Limited".
- 6.9 The Respondent states that she started to sell chastity devices on or around March 2005 and that, at that time, the Respondent had no knowledge of the Complainant's business or Complainant's Website. The Complainant states that her website is "...aimed at

couples who may not normally have considered introducing chastity play into their intimate relationships and are put off by conventional "sex/fetish/sites"."

- 6.10 In relation to the allegation that the Respondent's website plagiarises the content of the Complainant's website, the Respondent denies the allegation of copyright infringement and again repeats the claim that the Respondent was not aware of the Complainant until the complaint was received. The Respondent states that copyright infringement is not an issue for Nominet DRS.

Complainant's Reply

- 6.11 The Complainant acknowledges by way of reply that the issue of copyright infringement is not one to be dealt with by Nominet but asserts that the fact of copying by the Respondent from the Complainant's Website indicates prior knowledge of the Complainant's Website.
- 6.12 The Complainant contests the allegation that the name Chastity UK is generic. Using the fishing analogy raised by the Respondent, the Complainant refers to the names "*Fishing Times*" and "*Fishing Today*".
- 6.13 The Complainant alleges further examples of Abusive Behaviour claiming that after the date of the Complaint, the Respondent had altered the text of the web pages at the URL www.chastityuk.co.uk to include much greater use, within headings and general text, of the phrase "Chastity UK".
- 6.14 The Reply then deals at some length with allegations of plagiarism in relation to the Respondent's website.

7. Discussion and Findings

Rights

- 7.1 "*Rights*" are defined in the Nominet DRS Policy as "*....includ[ing], but.....not limited to rights enforceable under English Law*". In this case, there is no registered trade mark right. If the Complainant is to succeed she must show a Right by some other means.
- 7.2 The basis put forward in this case for the Complainant having Rights is use of the name "*Chastity UK*" on the Complainant's Website and use of the URL itself for the Complainant's Website. The Complainant alleges that the name Chastity UK is capable of distinguishing goods and services from those of others and that the name has a reputation amongst the chastity community. The Complainant also alleges that the Respondent's use of the Domain Name to promote chastity belts and other chastity devices is likely to cause confusion. The essence of these allegations therefore is one of passing off.

- 7.3 The thrust of the Respondent's counter position is that "chastity" is descriptive in relation to the goods and services provided by either party (ie chastity devices) and, therefore, there can be no Rights. The Respondent does not, however, dispute the degree of use of the name Chastity UK by the Complainant nor does the Respondent suggest that the Complainant's Website does not have the reputation alleged by the Complainant.
- 7.4 The Respondent raises this point because lack of distinctive character in a name is fatal to a claim in passing off or a claim that a name should be treated as a trade mark. The DRS policy also addresses this point specifically stating that *"...a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business"*.
- 7.5 Deciding whether the Complainant has Rights in this case is difficult. The point made by the Respondent that the term "chastity" is descriptive of the content of the Complainant's site is well taken. The Complainant's website is, in its own way, about a form of chastity. However, the name in question as used by the Complainant and in which Rights are asserted is "Chastity UK" or "Chastity-UK". It appears from supporting material submitted by the Complainant that the Complainant and/or the service operated through her website are known as "Chastity UK". This is evident from copy emails from suppliers and users of the Complainant's Website submitted in Appendix D to the Complainant's Complaint. All of these refer to the site as "Chastity UK" and the addressee of the letters is "Chastity UK".
- 7.6 The result seems to be that there is a number of people in the "chastity community" who recognise the Complainant's site and business by the name "Chastity UK". It may be that the addition of "uk" to the word "chastity" has helped to achieve this.
- 7.7 It is accepted law that a name which has largely descriptive elements can become distinctive with use. The use of the name Chastity UK is well documented in the Complaint and the extent of that use is not contested by the Respondent. Even so, this level of use may not be sufficient to establish rights in passing off that will be recognised in the courts. It is, however, clear that under the Nominet DRS the requirement to demonstrate Rights is not a particularly high threshold test (*Seiko v Designer Time* DRS 00248 Appeal Decision). On the other hand, there is a threshold provided in the definition of Rights in the DRS policy which excludes names of which are "wholly descriptive of the Complainant's business".
- 7.8 The Respondent has suggested an analogy of a claim to the word "fishing" while selling fishing rods. The Complainant in reply suggests that Rights could exist in such a scenario for *"Fishing Times"* or *"Fishing Today"*. Whilst analogies often have limited value, this point is of some interest. A search of the UK trade mark register (through the UK Patent Office Website at www.patent.gov.uk) shows no registrations for *"Fishing Times"* but does show registrations for *"Angling Times"* as a words only mark for a variety of goods

including journals and magazines ("*Angling Times*" being a magazine about angling). The trade mark register entry notes that the registration depends on distinctiveness acquired through use. I consider the current case to be one where, similarly, some degree of distinctiveness has been acquired through use in relation to a name which is largely descriptive (I do not seek to draw any more from the analogy than this).

- 7.9 Although I have found it difficult to come to a conclusion on this point, I believe that the Complainant does have Rights in the name "Chastity UK". I believe it has acquired these rights through use of the name "Chastity-UK" and "Chastity UK" over a number of years. That use and the level and nature of the use is uncontested. I am satisfied that the Complainant's business is known as "Chastity UK" by those in the "chastity community" and that a proportion of those individuals recognise "Chastity UK" services as being those provided through the website at www.chastity-uk.co.uk. The addition of the "UK" suffix is of some assistance to the Complainant in this respect although it has to be said it is not a particularly distinctive element.
- 7.10 Accordingly, I find that the Complainant has Rights in the name "Chastity UK" and "Chastity-UK". I also find that the Domain Name is similar (virtually identical) to the name in which the Complainant has Rights.

Abusive Registration

- 7.11 The essence of the Complainant's case is that the Respondent registered the Domain Name with a view to taking unfair advantage of the Complainant's Rights and that the Domain Name has been used in a way which is unfair and detrimental to the Complainant's Rights by seeking to hitch a free ride on the reputation that the Complainant's Website has established. The Complainant says that the Respondent knew of the Complainant's Website when the Respondent registered the Domain Name and has used material from the Complainant's Website to promote the same products as are discussed and promoted on the Complainant's Website. The aim, says the Complainant, is to cause confusion.
- 7.12 The Respondent says that she knew nothing of the Complainant's Website before registering the Domain Name and in fact knew nothing until the complaint was received.
- 7.13 I find it somewhat implausible that the Respondent who, on her own evidence, has been trading in a related area for several years, was not aware of the Complainant's Website when the Domain Name was registered and the Respondent's website at www.chastityuk.co.uk was launched. Given, what I assume to be, the specialist nature of the market in question, and given that the Respondent seems to be a savvy business person, I believe that the Respondent was fully aware of the Complainant's Website when the Domain Name was registered and when the Respondent's website was launched.

7.14 That brings me to the plagiarism allegations. These are numerous. The main allegations are of copying of text from the Complainant's Website including text in metatags. The Complainant has provided prints of the Respondent's website pages showing text which is identical to text appearing on the Complainant's Website, for example, the long tract below. This particular text no longer seems to be available on the Respondent's website.

"Ask a group of people "What is Chastity?" and you will receive quite an array of answers, often with definitions which include celibacy. Some dictionaries define "chastity" as abstaining from sexual relations or morality with respect to sexual relations, being pure, of virtuous character and some even associate "chastity" with virginity.

Chastity has its roots in both social and religious origins, but it has always involved one person having power over the natural urges and needs of another. It dates back hundreds of years and has been used variously to enforce fidelity, prevent masturbation, or, in some cases, protect from abuse.

Chastity and celibacy are interlinked. Celibacy is considered by some to be one of the strangest perversions, because by its very nature the human race would die out, it goes against our natural human instincts of survival. Chastity can be considered to be an extension of this, but what makes it different is that chastity is celibacy with the hope of remission.

***Chastity** or **chastity play** today is not about total abstinence from intercourse, the chaste man has a release date to earn and look forward to. It is the anticipation of a longed for orgasm which is the spice of chastity. It can be about your submission to your keyholder and your willingness to please her, knowing that if you do as she asks you will be granted release at some point. The feeling of a keyholder controlling your orgasms can be highly charged with eroticism, even when you're both apart.*

Part of our understanding is that "Chastity" is an exciting way of adding something very special to a relationship with the use of chastity belts or devices. It is something unique to spice up your sex life whether you be single or married.

The intricacies of Chastity work best in an already established loving and sexual relationship, where both partners feel comfortable to discuss openly their sexual pleasures, fantasies and the things which turn them on and off.

Simply put chastity is about denying your penis sexual stimulation, and giving control of your sexual being to another, your Keyholder. Chastity today is not about total abstinence from intercourse, because the chaste man has a release date and hopefully a rare but overwhelming orgasm to look forward to. The

release date, and control of orgasm is what makes chastity work."

- 7.15 Both sites carry the identical text. There has clearly been copying somewhere along the line. I do not have information in the Nominet papers to show who copied from whom. The Complainant's older Web pages are also unavailable at www.archive.org. The Respondent has provided a bare denial of copyright infringement. No explanation is offered for the identical text nor any explanations as to why certain articles that were alleged to have been copied have now been removed.
- 7.16 There is evidence to show that the Respondent is using large tracts of text identical to that found on the earlier-established Website of the Complainant. There is no evidence as to ownership of the copyright in that text - it could be owned by a third party.
- 7.17 Whilst the evidence on the point is thin, I believe that the text was available on the Complainant's Website before it was available on the Respondent's (given that the Complainant's Website was around several years before the Respondent's and given that the Respondent has not alleged that the text came first from her site or any other source). On balance, I believe that the text was copied by the Respondent and that it was copied from the Complainant's Website. That is not a finding of copyright infringement as I make no findings as to other factors such as title, nor am I entitled to do so. Whether or not there is copyright infringement is irrelevant. What is relevant is that the Respondent has chosen to use identical text.
- 7.18 I believe the use of identical text had a purpose: to make the Respondent's Website more like the Complainant's Website in order to benefit further from the almost identical nature of the Domain Name and the URL of the Complainant's Website.
- 7.19 This does, in my assessment, help to evidence the Respondent's intent in registering the Domain Name and setting up her website using the Domain Name.
- 7.20 I believe the Respondent knew full well of the Complainant's Website and registered the Domain Name with a view to taking advantage of the established nature of the Complainant's Website. The hope was that some users would think that the Respondent's Website was the Complainant's Website. That makes the Domain Name an Abusive Registration in the hands of the Respondent.

Decision

- 7.21 The Complainant has rights in the names "Chastity UK" and "Chastity-UK". The Domain Name is similar. The Domain Name is an Abusive Registration in the Respondent's hands.
- 7.22 The Complainant's request for a transfer of the Domain Name should be granted.

Stephen Bennett

Date