

DISPUTE RESOLUTION SERVICE

D00022755

Decision of Independent Expert (Summary Decision)

Adore Takeaway

and

Visionsoft

1. The Parties:

Complainant: Adore Takeaway
6 Hursley Road, Chandler's Ford
Eastleigh
SO53 2FU
United Kingdom

Respondent: Visionsoft
48 Rye Bank Road
FIRSWOOD
MANCHESTER
M16 0FU
United Kingdom

2. The Domain Name:

adoretakeaway.co.uk

3. Notification of Complaint

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

Yes

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.

No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name adoretakeaway.co.uk is an abusive registration

No

6. Other Factors

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

Yes

7. Comments (optional)

The Complainant seeks to assert an unregistered trade mark right, alleging concisely in the Complaint "I have been running Adore Takeaway since 2010 and it has always been named Adore Takeaway." The Complainant has adduced no evidence, however, to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree and (b) the name or mark in question is recognised by the purchasing trade / public as indicating the goods or services of the Complainant.

To support the claim of Abusive Registration, the Complainant has submitted only ambiguous and inconclusive documents, including an unsworn letter

from his accountant reciting that the Complainant's business has always been run under the name "Adore Kebab", and correspondence referring to the business variously as "Adore Kebab", "Adore Takeaway", or simply "Adore".

The Complainant additionally avers that the Respondent has taken unfair advantage and abused the Complainant's rights at the time of registration / acquisition. However, the Complaint alleges only that the Respondent, the Complainant's online ordering provider, is charging excessive fees on credit card payments and refuses to release the Disputed Domain Name to the Complainant.

As the Appeal Panel observed in DRS 04884 (maestro.co.uk), "Where a domain name is a single ordinary English word (e.g., 'adore'), 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".

Thus, even had the Complainant shown to the Expert's reasonable satisfaction that he has Rights in respect of a name or mark which is identical or similar to the Domain Name (the Complainant has not), the Complainant would additionally need very persuasive evidence to show the Domain Name is an Abusive Registration under the Policy.

From the very limited record available, it appears that the dispute between the Complainant and the Respondent may concern contract rights and may, therefore, be inappropriate for adjudication under the Policy in any event. See the Appeal decision in DRS 04632 (ireland.co.uk).

8. Decision

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

Signed:



Dated: 29 July 2020