

PRESS RELEASE – MySpace Loses myspace.co.uk Domain Appeal to Total Web Solutions

MySpace Inc. has been defeated by the registrant of the myspace.co.uk domain name [Total Web Solutions Limited](#) (TWS) in the Nominet DRS Appeal decision regarding the domain name. The original British owner received unanimous endorsement of their position in a three person Appeal verdict in their favour – overturning the much criticised original decision in favour of the US giant. There are no more steps that MySpace can take within the Nominet DRS arbitration process to challenge TWS's right to hold onto the name.

Both the first and the appeal decisions held that the vast majority of MySpace's claims had no merit – not least because the UK ISP had legitimately registered the name some 6 years before the social networking site had been formed and the Stockport based ISP had been using it to host numerous websites for clients.

Instead argument centred on the most recent use of the domain as a Pay Per Click website, hosting adverts for other websites that users could link to by clicking on them. MySpace Inc. claimed that this use had started when Rupert Murdoch had taken them over in July 2005. TWS attached evidence proving our use from at least June 2005, but the panel seemed to overlook this. Instead they decided the point on the basis of TWS's MD Paul Fallon's sworn affidavit and the lack of evidence from MySpace Inc.. They held there was "insufficient material" to uphold MySpace Inc.'s allegations.

Of more general interest was the second main point covered – namely whether parking use that started as legitimate could become abusive when the nature of the adverts hosted changed due to the sudden fame of a third party. In this case the adverts changed to reflect the fame of MySpace.com, but that had happened automatically as a result of the algorithms used by parking company Sedo. MySpace Inc. claimed TWS should have exercised control over the content of the adverts. No, said TWS – that is not a change of use.

The appeal panel said they were "reluctant to place any duty on a registrant, who has merely had the good fortune (or maybe ill fortune) to register a name in good faith..." and as long as they do nothing new to exploit the situation. That was the case here and so the domain is retained by TWS. "We knew we had done nothing wrong." said TWS MD Paul Fallon "We are delighted that all three members of the Appeal Panel agreed with us."

The appeal panel agreed with TWS's submissions that if MySpace Inc. wanted to litigate a passing off case, the proper forum to do so was in the court and not under the DRS.

Fallon added "We refused to be bullied by one of the largest media organisations

in the world. This has been a very stressful case for a legitimate medium sized ISP to have to take on – but we had to defend our reputation and to stand up for what was right.”

TWS were represented by [Bell Denning's](#) domain name specialist consultant solicitor Jim Davies, who briefed [Jonathan Turner](#) of [13 Old Square](#) to assist. Davies has been involved in a number of the more high profile domain name disputes in the UK recently, including the bounce.co.uk Appeal that resulted in Nominet UK issuing a public apology for the way the case was handled. In an echo of that action, TWS have an outstanding Formal Complaint against Nominet that is still to be dealt with in the myspace.co.uk case.