

## **6) The Status of the Respondent**

The complainants are far from legal experts on any subject, certainly not Corporate Law and Insolvency, and all of our submissions should be read as such.

There may be some debate about who the respondent is, but there is no debate about who the respondent isn't – CashEuroNet UK LLC – it doesn't exist. I have included evidence in Attachment 1 regarding the dissolution of the US company in Delaware; the UK Companies House status also reflects the ownership of the now dissolved US company.

Attachment 3 shows emails between the complainant and Bona Vacantia, in which they indicate that the assets may lie with them. Despite persistent contact over approximately four months and several follow-up emails, Bona Vacantia remained unresponsive and declined to confirm whether or not they held the asset. It was at that point, having exhausted reasonable attempts to establish the position, that the DRS complaint was submitted. Given the uncertainty over who the true respondent was, the complaint was deliberately drafted in terms applicable to any registrant, whether that be Bona Vacantia, a trademark agent, a web designer, or any other party.

Foreign companies registered at Companies House are rare; foreign companies that go into administration are extremely rare. Foreign companies that go into insolvency in the UK and then voluntarily dissolve in the US are rarer still – we are not aware of a comparable precedent.

Our understanding is that in similar, though not identical, cases, assets held in the US tend to fall under the jurisdiction of a US bankruptcy trustee or the Delaware wind-down process, while UK assets would pass to Bona Vacantia. For example, trademarks registered with the UK Intellectual Property Office would likely pass to Bona Vacantia, whilst trademarks held in the US would fall to their bankruptcy trustee.

Should the appeals panel find that the asset in fact lies with a US bankruptcy trustee rather than Bona Vacantia, the same principle applies. In either case, the domain name is held by a third party whose only conceivable reason for retaining it is to sell it at a profit. As established in tigerbeer.co.uk, that constitutes an abusive registration regardless of which entity holds it.

Given that CashEuroNet UK LLC entered UK administration prior to dissolution, it is possible that this asset was not identified or dealt with during that process. It is our belief that Bona Vacantia may not currently be aware of this asset, though we have made contact with them as evidenced in Attachment 3.

Regardless of the precise history of the administration process, it is our position that this asset should now be treated as falling to Bona Vacantia, and that they are therefore the appropriate respondent in this matter. As such, Bona Vacantia should be treated as having assumed the domain name at an unrecorded date following the complainant taking possession of QuickQuid.co.uk in April 2023.

When the complaint was made, the domain was held behind a privacy service. The complainant was not aware at the time that this was GoDaddy's privacy service, nor that it was GoDaddy who subsequently switched the registration to the respondent. Should GoDaddy therefore be considered the respondent? In our opinion, probably not – but if they were, then our complaint was never put to them either, which raises the same fundamental problem.

In the alternative, should the appeals panel find that there is no identifiable respondent and that the complaint could never have succeeded on that basis – what part of that failure can reasonably be attributed to the complainant? The complainant filed without any means of identifying who the true respondent was, knowing only that it was not CashEuroNet UK LLC, a company that no longer existed. The complainant had no visibility of who, if anyone, stood behind the registration at the time of filing.

In such circumstances, it may be reasonable for the panel to make an alternative finding that the complaint be nullified and the fees paid by the complainant be refunded. Fees were accepted for a process that, on the information available, the complainant could never have succeeded in. When invoices were submitted to the complainant – both on the initial complaint and subsequently on this appeal – Nominet were aware that CashEuroNet UK LLC was the named respondent. That information was known to them at both stages, and fees were accepted on both occasions. If Nominet were satisfied that the respondent was a valid and reachable party at the point of accepting those fees, that satisfaction was misplaced – and that cannot be a failure attributable to the complainant, nor should it come at a cost to a complainant who entered into a process that they could never have prevailed in.