

**DISPUTE RESOLUTION SERVICE**

**D00013694**

**Decision of Independent Expert**

**Universal Protein Supplements Corporation**

and

**Universal Sport Nutrition**

**1. The Parties:**

Complainant: Universal Protein Supplements Corporation  
3 Terminal Road  
New Brunswick  
New Jersey  
08901  
United States

Respondent: Universal Sport Nutrition  
Flat 10, Arran Court  
543 Woodborough Road  
Nottingham  
NG3 5FR  
United Kingdom

**2. The Domain Name:**

universalsportnutrition.co.uk

**3. Procedural History:**

3.1 I can confirm that 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 to 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.

### 3.2 Timeline

03 January 2014 17:38 Dispute received  
06 January 2014 09:45 Complaint validated  
06 January 2014 09:57 Notification of Complaint sent to parties  
08 January 2014 08:11 Response received  
08 January 2014 08:12 Notification of Response sent to parties  
13 January 2014 01:30 Reply reminder sent  
16 January 2014 09:20 No Reply received  
16 January 2014 09:21 Mediator appointed  
22 January 2014 12:23 Mediation started  
04 February 2014 13:15 Mediation failed  
04 February 2014 13:26 Close of mediation documents sent  
06 February 2014 14:02 Expert decision payment received

## 4. Factual Background

- 4.1 The Complainant, Universal Protein Supplements Corporation, was incorporated in 1983 in the State of New Jersey and trades under the name Universal Nutrition. It is the owner at least 40 trade mark registrations incorporating the words “UNIVERSAL NUTRITION” and 45 incorporating the word “UNIVERSAL”.
- 4.2 The domain name <universalnutrition.com> was registered on 22 July 1998 in the name of Universal Labs, a subsidiary company of the Complainant.
- 4.3 The Complainant also owns a number of domain names which are identical or similar to its UNIVERSAL and UNIVERSAL NUTRITION trade marks, including <universalusa.com>, <universal-nutrition.com> and <universalsportnutrition.com>.
- 4.4 The Domain Name was registered on 21 January 2012.
- 4.5 The Respondent operates retail premises in Nottingham, UK, under the name “Universal Sport Nutrition”, and between 6 December 2012 and 6 March 2013 also operated a website under the domain name <universalsportnutrition.com> offering the Complainant’s ANIMAL PAK product for sale alongside competing goods.

## 5. Parties’ Contentions

### The Complainant

- 5.1 The Complainant’s contentions are summarised as follows:

## Rights

- 5.2 The Complainant is one of the leading providers of sports nutrition health products in the world. It is the owner of a number of trade mark registrations in various countries around the world, including Community Trade Mark registrations for UNIVERSAL & Design and UNIVERSAL NUTRITION & Design, covering dietary food supplements and nutritional supplements in International Class 5, and other related goods and services in Classes 29, 30 and 35.
- 5.3 The Complainant's many European Community, United States and other national trade mark registrations for the UNIVERSAL NUTRITION and UNIVERSAL marks establish its rights in these marks.
- 5.4 In addition, the Complainant has used the UNIVERSAL and UNIVERSAL NUTRITION trade marks continuously since at least 1983 in connection with the sale of nutritional supplements. Sales of its products marketed under these trade marks account for at least 4 % of the sports nutrition health market in the United States and at least 7 % of the global market. Its sales volume has exceeded USD\$20million each year since at least 2003, and its advertising spend is more than USD\$1million each year.
- 5.5 The Complainant's UNIVERSAL NUTRITION products have received many awards, including Bodybuilding.com's Multi-Vitamin of the Year (2005-07), Best Ads of the Year (2005-06), and Joint Health Supplement of the Year (2006-07). Recognition of the Complainant's products offered under its trade marks is prominent and widespread.
- 5.6 The Complainant has used and continues to use its trade marks prominently on its website at <universalnutrition.com>.
- 5.7 The use of the generic top level domain <.co.uk> in the Domain Name is without significance under paragraph 2(a)(i) of the Policy. Similarly insignificant, in the context of the Complainant's sports and nutrition fitness products, is the addition of "sport" in the Domain Name, a generic and descriptive term, and which does not distinguish the Domain Name from the Complainant's UNIVERSAL and UNIVERSAL NUTRITION marks.

## Abusive Registration

- 5.8 The Respondent's registration of the Domain Name is abusive because it was registered with knowledge of the Complainant's rights, is unfairly disruptive to the Complainant's business, is now being held to block the Complainant's rightful registration and sell to the Complainant at excessive cost, and is likely to confuse customers seeking the Complainant's products.
- 5.9 The Respondent registered the Domain Name nearly 15 years after the Complainant's subsidiary registered the <universalnutrition.com> domain name, more than 30 years after the Complainant began using its UNIVERSAL and UNIVERSAL NUTRITION marks and without the authorisation or knowledge of the Complainant.

- 5.10 The Respondent was also formerly the registrant of the domain name <universalsportnutrition.com>. The website to which this domain name resolved offered the Complainant's ANIMAL PAK product for sale alongside competing goods, between 6 December 2012 and 6 March 2013. The Respondent failed to renew its registration of the domain name <universalsportnutrition.com> and in December 2013 the Complainant acquired the domain name. This domain name now redirects to the Complainant's website at <universalnutrition.com>.
- 5.11 To the Complainant's knowledge, the Domain Name has not hosted an active webpage since its registration in January 2012. Such non-use evidences, at a minimum, an attempt to block the Complainant's registration of the Domain Name and is evidence of abuse under paragraph 3(a)(i)(B) of the Policy.
- 5.12 The parties' interactions began in March 2012 when the Complainant learned of the use of the UNIVERSAL NUTRITION trade mark on a Facebook page entitled "Universal Sport Nutrition". The Complainant, through its US legal representatives, wrote to the address listed on this page, asserting the Complainant's rights in its UNIVERSAL and UNIVERSAL NUTRITION trade marks, and requesting the owner of the page to contact the Complainant's legal representatives to discuss resolution. No response to this letter was received.
- 5.13 On 11 November 2012, the domain name <universalsportnutrition.com> was registered in the name of Mr Danny Nag at the same address given on the "Universal Nutrition" Facebook page referred to above.
- 5.14 On 6 March 2013, the Complainant, through its UK legal representatives, wrote to Mr Nag regarding the <universalsportnutrition.com> domain and associated website, which contained information on retail premises (i) operating from the same address as the registrant of the <universalsportnutrition.com> domain name and (ii) using the trading name "Universal Sport Nutrition". In addition, the letter noted that the Domain Name was registered in the name of "Universal Sport Nutrition" with an address extremely close to these premises. The Complainant therefore assumed that Mr Nag also operated the Domain Name.
- 5.15 The Respondent, through a representative Mr Karl Dixon, then negotiated by telephone with the Complainant's representatives. In these negotiations, Mr Dixon acknowledged the validity of the Complainant's position and proposed an agreement between the parties that included the Respondent's (1) transfer of the Domain Name and the <universalsportnutrition.com> domain name; (2) adoption of and website transition to <unionsportnutrition.com>; (3) removal of all references to "Universal Sport Nutrition" from the Respondent's website and retail premises; and (4) no further sales of Universal Nutrition's ANIMAL PAK products to prevent further confusion. In return, the Complainant would pay £70 toward costs associated with registration and transfer of the

domain names. Further to the agreement, the Respondent would delete its Universal Sport Nutrition Twitter and Facebook pages.

- 5.16 Consistent with the agreement, the Respondent registered the <unionsportnutrition.com> domain name on 8 March 2013. Between March and April 2013, the website located at <universalsportnutrition.com> was transferred to <unionsportnutrition.com>, and <universalsportnutrition.com> was deactivated.
- 5.17 Apparently having second thoughts, the Respondent contacted the Complainant by phone on May 23, 2013, and said that the Respondent would handle the matter personally. The Respondent demanded that the Complainant “*make him an offer*” and said that although he was not using the domain currently, “*he got them first*”. The Respondent demanded payment exceeding the £70 previously agreed upon, which was above the reasonable registration and transfer costs. The Respondent by this time had removed the website located at <universalsportnutrition.com> and the <unionsportnutrition.com> domain was active.
- 5.18 The Respondent then abandoned negotiations after introducing a new representative, Mr J Reyes of PcSuperfix. In correspondence of 4 July 2013, Mr. Reyes indicated: “*We are currently creating the new website and logo’s (some of which have already been transferred over to his temporary website) for Mr. Nag where both of his domain names www.universalsportnutrition.com and www.universalsportnutrition.co.uk will both be pointed at [...].*”
- 5.19 Although it has not used the Domain Name, the Respondent used its <universalsportnutrition.com> domain name to resolve to a website which offered nutritional supplements competitive with the Complainant’s products as well as the Complainant’s ANIMAL PAK products. Since it knew of the Complainant’s ANIMAL PAK goods, the Respondent must have been aware of the UNIVERSAL and UNIVERSAL NUTRITION marks when it registered the Domain Name. Based on the history of correspondence between the parties, the strong, distinctive nature of the Complainant’s mark and its age, and the Respondent’s intended use of the Domain Name for a fitness supplement website, it is highly unlikely that Respondent registered the Domain Name without knowledge of the Complainant’s rights.
- 5.20 The first result from a basic Google search for “universal sport nutrition” is a link to the Complainant’s website at <universalnutrition.com>. Subsequent results are links to the websites of various internet retailers of, and sponsored advertisements for, the Complainant’s supplement products.
- 5.21 Additionally, there is no evidence to show that the Respondent’s name is ‘Universal Sport Nutrition’ or <universalsportnutrition.co.uk>. According to the WHOIS listing for the Domain Name, the Respondent’s name is apparently Danny Nag. The Respondent cannot point to any evidence establishing that it is legally chartered or commonly known as Universal Sport Nutrition or <universalsportnutrition.co.uk>. Instead, the Respondent

has most recently renamed his business as Union Sport Nutrition and registered <unionsportnutrition.com>. The fact that the Respondent at one point was affiliated with a business named 'Universal Sport Nutrition' and engaged in the sale of the Complainant's products does not defeat the Complainant's assertion that the Domain Name is abusive. The Respondent is not commonly known as, or legitimately connected to, a name identical or similar to the Domain Name.

- 5.22 The Complainant has no knowledge that the Domain Name was ever used to host a website, although the Respondent's intent at the time of registration is clear based on the subsequent use of a similar domain name <universalsportnutrition.com> and use of "Universal Sport Nutrition" on social networking sites.
- 5.23 The Respondent's correspondence is a threat to use the Domain Name and <universalsportnutrition.com> to redirect consumers to the Respondent's <unionsportnutrition.com> website, where it offers competing products to the Complainant's products. Such use is evidence of an abusive registration under paragraph 3(a)(ii) of the Policy because it threatens use of the Domain Name to disrupt the Complainant's business and intentionally attempts to attract, for commercial gain, the Complainant's customers by creating a likelihood of confusion as to source, sponsorship and affiliation, or endorsement of the website.
- 5.24 Further, the Respondent's stated preparations to use the Domain Name to redirect to a website selling nutritional supplements that compete with the Complainant's products cannot be considered a 'genuine' offering of goods as described in paragraph 4(a)(i)(A) of the Policy. The Respondent's preparations are deliberately intended to trade on the Complainant's rights for the purpose of creating initial interest confusion and disrupting the Complainant's business.
- 5.25 The Respondent's intent at the time of registration of the Domain Name was to engage in the sport and nutritional supplement business by using a domain name nearly identical to the Complainant's mark to lure the Complainant's customers, compete with the Complainant's own business, prevent the Complainant's rightful registration and use of the Domain Name, and profit from the unauthorised use of the Complainant's UNIVERSAL and UNIVERSAL NUTRITION marks. Based on its correspondence seeking offers of compensation, the Respondent's efforts were, in the alternative, to extract payment from the Complainant.
- 5.26 The evidence in sum establishes that the Complainant has rights in the Domain Name and the Respondent's registration and maintenance of the Domain Name is abusive under paragraphs 3(a)(i) and 3(a)(ii) of the Policy. As such, the Domain Name should be transferred to the Complainant.

#### The Respondent

- 5.27 From the submissions contained in the Complaint, the Response and the correspondence between the parties attached to the Complaint and the

Response, it seems apparent that the Respondent, listed on the WHOIS search as Universal Sport Nutrition, is controlled by a Mr D Nag. Mr Nag appears to have given authority, firstly to a Mr K Dixon, and then to a Mr J Reyes of PcSuperfix, to act on his behalf in relation to this dispute. In light of these submissions, the Expert will treat the Respondent and Mr Nag as the same entity.

5.28 The Response as filed is short. Attached to that Response however are copies of correspondence between the Complainant's UK legal representatives and Mr J Reyes of PcSuperfix and dated between 3 July 2013 and 31 July 2013, the majority of which the Complainant has also provided as annexures to its Complaint. The Response, together with (i) the correspondence from Mr Reyes to the Complainant's representatives, and (ii) his email to Nominet (see below), are hard to comprehend in places. From what the Expert can make out, it makes the following points so far as they are material to this dispute under the DRS:

- The Complainant has acquired many domain names in most countries to cover its intellectual property. It did not however register the Domain Name. Instead it concentrated on protecting the term "universalnutrition" and registered numerous domain names incorporating that term.
- The Complainant's reason for seeking to have the Domain Name transferred to it is solely to harass the Respondent.
- The Respondent's business strategies were to provide proven high end products aimed at the high end market. The Respondent obtained the two domain names, <universalsportnutrition.com> and <universalsportnutrition.co.uk> with the sole intention of portraying a strong presence in a competitive market. The Respondent had found that specialist proven supplement products had their followers.
- The domain names were registered as they were freely available. The Complainant had an opportunity to register the Domain Name before the Respondent did, had it thought that the Domain Name would be a threat to the Complainant and its business, but it failed to do so.
- The shop run by the Respondent is clearly not a threat to the Complainant, and the Domain Name that it has registered is irrelevant to the Complainant. This is especially so as the Domain Name is totally different to the name of the Complainant. The Respondent does not cater for the Complainant's UNIVERSAL NUTRITION products as they are of no use or benefit to its customers.

5.29 In the correspondence attached to the Response, Mr Reyes makes a number of points in response to the Complainant's claims against his client. The material points from that correspondence that relate to this dispute under the DRS are summarised below:

- The Respondent has authorised Mr Reyes' business, PcSuperfix, to take over its case and handle its retail and ecommerce business in order that the Respondent can proceed and expand its universal sport nutrition company.

- In pursuing the dispute against Mr Reyes' client, the Complainant's UK legal representatives have harassed the Respondent, resulting in Mr Nag experiencing severe stress.
- The Complainant's false threats of legal action based on intellectual property infringement initially caused the Respondent to bring down its website and gave it the impression that it must surrender the domain names in question. The Respondent continues to cease operation of its website under the Domain Name and has changed its domain name, which has also caused Mr Nag to suffer stress and losses, issues which solicitors of PcSuperfix are investigating.
- PcSuperfix are currently creating the new website and logos for the Respondent. Both of the domain names in question will redirect to this new website so that the Respondent can expand its business through its global ecommerce website and seven sport nutrition shops and benefit financially from these domain names.
- The domain names in question have nothing to do with the Complainant's website and carry no resemblance to the Complainant.
- PcSuperfix have never heard of the Complainant, despite being involved in the fitness website building for many years.
- The value of the domain names in question is beyond any reasonable offer the Complainant is ever likely to agree, especially as they would give extreme competition to USN products which are extremely well known throughout the internet and the global fitness industry and is a well-known large established company. No further details however are given on who or what this "USN" entity is or relates to.
- The Respondent has informed PcSuperfix of its planned campaign and has been in negotiations with a USN representative.
- The Respondent is the legal owner of the domain names in question.
- PcSuperfix will continue to advise the Respondent not to sell the domain names in question and will build its new website (to which these domain names will resolve) in order to fulfil the Respondent's business plans of creating a global internet business retailing high quality universal sport nutrition products that are well known throughout the fitness industry.
- When the Complainant's US legal representatives first wrote to Mr Nag in relation to his retail premises, the domain names in question had not been acquired by him. This correspondence inspired Mr Nag to acquire the domain names in order to avoid any potential foreseeable problems.
- The Respondent has no intention of including the Complainant's products in its business strategies. The Complainant is invited to provide an explanation of how the Respondent's business strategy or the domain names would cause public or trade confusion, especially as the initial claims made by the Complainant were made prior to the Respondent's acquisition of the domain names.
- The Respondent is not infringing the Complainant's trade mark rights or its products.
- The Respondent has removed the Complainant's products from sale at its retail premises as they do not match the business strategy of the Respondent to only sell high quality products.



- Any individual would recognise that superior domain names like <universalnutrition.com> and the Domain Name have a business advantage. These domain names were chosen solely for that purpose and not on the basis of infringing on another company or to delude, sway or confuse the trade or public into thinking that the Respondent's domain names are intentionally taking an unfair advantage of the Complainant's goodwill or CTM.

5.30 On the same date as the Response, Mr Reyes also sent an email to Nominet. In so far as is material, Mr Reyes contentions in this email are summarised as follows:

- He was unable to submit the full 5000 words permitted by the Procedure through use of the online submittal service for the Response, so has had to attach copies of correspondence as mentioned above to the Response to set out his case.
- He makes various allegations in relation to the Complainant's acquisition of the domain name <universalsportnutrition.com>. As the DRS is not the appropriate forum for deciding disputes regarding .com domain names, the Expert has ignored these allegations for the purpose of this dispute under the DRS in relation to the Domain Name.
- The running of a small shop bears no threat to the Complainant. He also refers to the use by the Respondent of the name corresponding to the Domain Name on its shop, on t-shirts and on the website which he claims does not infringe the Complainant's trade marks.
- He is not interested in the mediation service offered by Nominet in relation to DRS disputes as there is nothing to mediate with the Complainant; the Domain Name was obtained legally to run a business which is a small shop business that carries no threat to the Complainant.
- Finally, he states that he has registered the domain names <universalsuperiornutrition.com> and <universalsuperiornutrition.co.uk> to run his new business, and neither of these names bear any reference to the Complainant. If the Complainant complains about these names he will go beyond Nominet and ICANN.

### The Complainant's Reply

5.31 The Complainant did not file a Reply.

## **6. Discussions and Findings**

### General

6.1 The Complainant is required under paragraph 2(b) of the Policy to prove to the Expert, 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.

### Complainant's Rights

- 6.2 Paragraph 1 of the Policy provides that Rights means "*rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*". Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.
- 6.3 The Complainant is the owner of various trade mark registrations in a number of countries which include the words UNIVERSAL NUTRITION. Although some of these registrations are for the mark UNIVERSAL NUTRITION, the majority of these registrations (i) combine the words UNIVERSAL NUTRITION with a 'swirl' device, although the words UNIVERSAL NUTRITION appear prominently and in a non-stylised form in each case, and (ii) pre-date registration of the Domain Name (for example, the Complainant's Community Trade Mark registration for UNIVERSAL NUTRITION plus 'swirl' device). The Complainant also contends (unchallenged by the Respondent) that it is the owner of a number of domain names which incorporate the mark UNIVERSAL NUTRITION.
- 6.4 The Complainant has provided evidence of use of the mark UNIVERSAL NUTRITION in the course of its business of selling nutritional supplements, including sports nutrition health products – in particular use of the name on its website at <universalnutrition.com>. This evidence is supported by a declaration of Michael Rockoff, Vice President (Marketing) of the Complainant in which he states, inter alia, that (i) the Complainant's sales constitute 4 % of the sports nutrition health market in the United States and 7 % of the global market, (ii) the Complainant's sales volume has totalled at least USD\$20million each year since 2003, and (iii) the Complainant's worldwide advertising expenditure has exceeded USD\$1million for each of the last five years.
- 6.5 The Expert is satisfied, on the evidence before him, that the Complainant has Rights in the term "UNIVERSAL NUTRITION". The Expert acknowledges that these are two ordinary English words, and when used in relation to the Complainant's business, namely the sale of nutritional supplements, do not have a particularly high degree of inherent distinctive character. However, the Complainant does have registered trade mark rights which cover the term, and it is clear and well established that registered trade mark rights fall within the definition of Rights under the Policy. In addition, the words UNIVERSAL NUTRITION are not, in the Expert's opinion, wholly descriptive of the Complainant's business. Through use of the mark in relation to the Complainant's business, as evidenced in the Complaint, coupled with the use made by the Complainant of its UNIVERSAL mark, the Expert finds on the balance of probabilities that the mark UNIVERSAL NUTRITION has

acquired distinctiveness and/or a secondary meaning through use, and is associated with the Complainant.

### Similarity

- 6.6 Having established that the Complainant has Rights in respect of the mark UNIVERSAL NUTRITION, the Expert is required to decide whether this mark is identical or similar to the Domain Name.
- 6.7 Ignoring the generic “co.uk” suffix, the Domain Name comprises the Complainant’s mark UNIVERSAL NUTRITION in its entirety, although the words are separated by the addition of the generic English word “SPORT”. Given that the Complainant is engaged in the sale of sports nutritional products under the marks UNIVERSAL and UNIVERSAL NUTRITION, the word “SPORT” in this context can be seen as being descriptive in nature and the addition of this word does nothing to distinguish the dominant or distinctive elements of the Domain Name from the Complainant’s Rights in the mark UNIVERSAL NUTRITION.
- 6.8 The Expert therefore finds that the Complainant has Rights in a name or mark which is similar to the Domain Name.

### Abusive Registration

- 6.9 Paragraph 1 of the Policy defines “Abusive Registration” as 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 has been unfairly detrimental to the Complainant’s Rights.
- 6.10 Paragraph 3 of the Policy sets out a non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration. Paragraph 4 of the Policy provides a non-exhaustive list of the factors which may be evidence that the Domain Name is not an Abusive Registration.
- 6.11 The Policy provides for the Complainant to prove, on the balance of probabilities, that the Domain Name is an Abusive Registration. The burden of proof is therefore firmly on the Complainant.
- 6.12 The Complainant contends that the Respondent’s registration of the Domain Name is abusive as it was registered with knowledge of the Complainant’s Rights, is unfairly disruptive to the Complainant’s business, and is now being held to block the Complainant’s rightful registration and to sell to the Complainant at excessive cost. In addition, it contends that the Domain Name is likely to confuse customers seeking the Complainant’s

products. In essence, the Complainant bases its claim on Abusive Registration under paragraphs 3(a)(i)(A), (B) and (C), and paragraph 3(a)(ii) of the Policy.

- 6.13 Paragraph 3(a)(i) concerns the registrant's (who in this case is the Respondent) motives at the time of registration of the Domain Name. In this regard, although the Respondent's representative Mr Reyes claims to have never heard of the Complainant, there is no statement from him, the Respondent's previous representative or the Respondent itself on whether the Respondent was aware of the Complainant or not at the time that it registered the Domain Name. Mr Reyes does acknowledge (and further, does not deny) that the Complainant has been in business for the last 30 years. In addition, from evidence submitted by the Complainant (which has not been challenged or rebutted by the Respondent or its authorised representative), the Respondent has previously promoted and offered for sale some of the Complainant's products as well as its competitors' products. It is also clear that the Respondent has been engaged in a business that provides nutritional supplements, including various sports health products.
- 6.14 Further, and as noted above, the Complainant's Rights exist in the term "UNIVERSAL NUTRITION" and the Domain Name incorporates this term in its entirety, separated only by the word SPORT. The Respondent has put forward no explanation as to why it chose the name 'Universal Sport Nutrition' for its business and corresponding domain names (including the Domain Name in dispute). The adoption of the word 'Universal' does not seem co-incidental in the Expert's view. It is a term which the Complainant has registered trade mark rights in and under which it provides nutritional supplement products, and the Respondent is also engaged in the sale of similar products in the same sector as the Complainant. It could instead have chosen any number of prefixes to the term 'Sport Nutrition' to describe its business of providing sport nutrition products and then sought to register the corresponding domain name(s), as it subsequently did with the registration of the <unionsportnutrition.com> domain name.
- 6.15 In addition, the Respondent's representative makes various references to "USN" in its correspondence with the Complainant's representatives prior to the date of the Complaint. The Respondent fails to explain what this reference stands for, but from what the Expert can make out from various statements made in the letters sent by Mr Reyes to the Complainant's representatives, it appears to relate to a third party company that provides sports nutritional products under the "USN" brand. No further details however are given on who or what this "USN" entity is or relates to. Further, on being contacted by the Complainant's solicitors with regard to its use of the 'Universal Sport Nutrition' name, the Respondent ceased use of the previously active website at <universalsportnutrition.com> and registered an alternative domain name incorporating the words "Union Sport Nutrition".
- 6.16 Given the above, together with the fact that the area of business that the Respondent is engaged in involves the provision of sports nutrition

products, and the Complainant's long standing history of selling nutritional supplement products under its mark, the Expert finds that the Respondent is likely to have had some actual or at least constructive knowledge of the UNIVERSAL NUTRITION brand and mark, in which the Complainant has Rights, at the time that it registered the Domain Name.

- 6.17 The Expert notes that to the Complainant's knowledge, the Domain Name has not resolved to an active website since its registration. The Respondent has not put forward any evidence of use of the Domain Name in connection with an active website. However, the Respondent has registered a domain name that incorporates the Complainant's UNIVERSAL NUTRITION mark in its entirety, together with the addition of the word SPORT, a generic English word that used in this context also links the Complainant's mark to an industry that it is involved in. It has also used a domain name similar to the Domain Name to promote an active website which promotes the sale of nutritional supplement products (including some of the Complainant's products and products of other entities which compete with the Complainant).
- 6.18 Further, the degree of similarity between the Complainant's mark UNIVERSAL NUTRITION and the Domain Name, and the strength of the Complainant's Rights, means that consumers searching online for the Complainant and its sports nutrition products are, in the Expert's view based on the evidence before him, likely to expect there to be some connection between the website operated under the Domain Name and the Complainant, even before they arrive at that website (so regardless of the state of that website, which in this case is a simple parking page). As stated in Paragraph 3.3 of the Experts' Overview<sup>1</sup>:

*"This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived."*

#### Paragraph 4 of the Policy

- 6.19 Paragraph 4 of the Policy provides guidance to parties to a DRS proceeding on how the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration. Central to the Respondent's case (although not specifically pleaded by the Respondent) are the factors set out in paragraph 4(a)(i)(A) and (B), which read:

*"Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

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<sup>1</sup> The Experts' overview is a document promulgated by Nominet's panel of Experts which deals with a range of issues that come up in DRS disputes and provides parties to DRS disputes with helpful guidance in respect of the Policy and Procedure.

- A. *used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;*
- B. *been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;”*

6.20 In relation to paragraph 4(a)(i)(A), as noted above there has been no use by the Respondent of the Domain Name, nor is there any evidence before the Expert that the Respondent has made demonstrable preparations to use the Domain Name. However, there is evidence to support use of the domain name <universalsportnutrition.com>, which is similar to the Domain Name in that all elements prior to the generic top level domain <.com> are identical to those in the Domain Name prior to the <.co.uk> suffix.

6.21 In order to make out this ground, the Respondent must show that such use is in connection with a genuine offering of goods or services. “Genuine” in this context is undefined, but helpful guidance is given in the Experts’ Overview which states that an offering of goods or services that is designed to take unfair advantage of or damage the Complainant’s rights/business is not “genuine”. In this case, the Expert does not accept that use of the <universalsportnutrition.com> domain name can be considered to be “genuine” as required under this paragraph 4(a)(i)(A) – for the following reasons:

- The <universalsportnutrition.com> domain name was registered on 11 November 2012 in the name of Mr Nag. This was almost seven months after the Complainant, through its legal representatives, wrote to Universal Sport Nutrition, at the same address as that of the registrant of this domain name, complaining about the use of the mark UNIVERSAL SPORT NUTRITION in connection with the promotion and sale of nutritional supplements and related goods. The persons behind Universal Sport Nutrition could have challenged the merits of the claims made against them by the Complainant, but according to the Complainant (and not specifically denied by the Respondent) the Respondent’s previously authorised representative eventually agreed to cease use of the term Universal Sport Nutrition on the website and rebrand to ‘Union Sport Nutrition’; and
- the likelihood, as noted above, that the Respondent had knowledge of the Complainant’s UNIVERSAL NUTRITION mark at the time that it registered the Domain Name (and indeed even if this were not the case, the domain name <universalsportnutrition.com> was registered after the Complainant had contacted the Respondent in May 2012).

6.22 In relation to paragraph 4(a)(i)(B), there is insufficient evidence before the Expert to enable the Expert to find that, on the balance of probabilities, the Respondent has been commonly (underline added by the Expert) known by the name or legitimately connected with a mark which is identical or similar to the Domain Name. The Respondent registered the Domain Name on 21 January 2012. It has been associated with a retail premises in Nottingham, UK which has a shop front sign bearing the name ‘Universal Sport

Nutrition’ and a Facebook page operating under the name ‘Universal Sport Nutrition’. From the evidence submitted by the Complainant, this Facebook page appears to have been established in December 2011, with the first post on its wall dated 20 December 2011 which reads as follows:

*“(universal sport nutrition) Coming soon to the midlands, the finest in sports nutritional products, clothing for MMA boxing weight training and the highest quality in sports supplements from the world over.”*

On the evidence submitted by the Complainant, including the declaration of Michael Rockoff, Vice President (Marketing) of the Complainant, the Complainant has generated goodwill and reputation in its UNIVERSAL NUTRITION mark through many years of use of the mark which predate the coming into existence of the Respondent’s ‘Universal Sport Nutrition’ business. Coupled with the finding of the Respondent having actual or constructive knowledge of the Complainant’s mark, it cannot be said that the Respondent has been legitimately connected with a mark which is identical or similar to the Domain Name.

- 6.23 In the circumstances, the Expert finds that on the balance of probabilities the Domain Name was registered or otherwise acquired in a manner which, at the time the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights and therefore that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

## **7. Decision**

- 7.1 The Expert finds that the Complainant has Rights in the name UNIVERSAL NUTRITION which is similar to the Domain Name, and further that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 The Expert therefore directs that the Domain Name should be transferred to the Complainant.

**Signed Ravi Mohindra**

**Dated 2 March 2014**