

## **Nominet UK Dispute Resolution Service**

**DRS Number 05173**

### **Decision of Independent Expert**

#### **1. Parties**

Complainant: The Kids Window Ltd  
Address: Mulberry House  
583 Fulham Road  
London  
Postcode: SW6 5UA  
Country: GB

Respondent: Balata.com LLC  
Address: PO Box 10922  
Tel Aviv  
Postcode: 69081  
Country: IL

#### **2. Domain Name**

<kidswindow.co.uk> (the "Domain Name")

#### **3. Procedural Background**

The complaint of the Complainant was entered in the Nominet system on 24 October 2007. Nominet validated the complaint on 29 October 2007 and transmitted a copy of the complaint to the Respondent. A response was received from the Respondent on 12 November 2007. On 20 November 2007 the Complainant submitted a reply. On 5 December 2007 the Complainant paid Nominet the appropriate fee for a decision of an Expert pursuant to paragraph 7 of the Nominet UK Dispute Resolution Service Policy (the "Policy").

The undersigned (the "Expert") has confirmed to Nominet that I know of no reason why I cannot properly accept the invitation to act as Expert in this case and has further confirmed that I know of no matters which ought to be drawn to the attention of the parties, which might appear to call into question my independence and/or impartiality. The undersigned, Christopher Gibson, was appointed as Expert in this case on 7 December 2007.

#### **4. The Facts**

The Complainant is The Kids Window Ltd., a company incorporated in the UK early in the year 2000. The Complainant has submitted certificates to show that "THE KIDS WINDOW" is a registered trade mark, registered first as word mark on 18th February 2000 and then with logo on 14th April 2000, and applicable (among others) to classes 25 and 42 (articles of clothing and information by Internet means). The Complainant operates its primary web site at [www.thekidswindow.co.uk](http://www.thekidswindow.co.uk), and its domain name, <thekidswindow.co.uk> was registered in February 2000.

From the WHOIS records, the Domain Name <kidswindow.co.uk> was registered for the Respondent, Balata.com LLC, on 26 July 2004. The URL for the Domain Name, [www.kidswindow.co.uk](http://www.kidswindow.co.uk), resolves to a web site containing marketing information and links for children's' clothing and listing that "THIS DOMAIN MAY BE FOR SALE."

## **5. The Parties' Contentions**

### Complainant's Complaint

The Complainant states that the Domain Name in dispute is identical or similar to a name or mark in which it has Rights and that the Domain Name in the hands of the Respondent is an Abusive Registration.

#### Rights:

The Complainant contends that it has Rights in a name and mark which is identical or similar to the Domain Name. The Complainant asserts that the Domain Name <kidswindow.co.uk> is confusingly similar to its own domain name and registered trade mark. As noted above, the Complainant has provided documentary evidence of rights in the registered the mark, THE KIDS WINDOW, from early 2000. The Complainant also states that it has been trading under the domain name <thekidswindow.co.uk> since September 2000 and has built-up extensive listings all across the world for children's clothing, with Google currently containing 13,600 listings indexed for "thekidswindow.co.uk". The Complainant further asserts that it has invested over £500,000 in online and offline promotion since 2001, and is very well known for selling children's clothing.

#### Abusive Registration:

The Complainant explains that it had initially registered a number domain names closely related to its name, including the Domain Name in dispute. A re-direction was put in place so the Domain Name <kidswindow.co.uk> would resolve to the Complainant's primary web site at <thekidswindow.co.uk>. However, due to changes in email and post addresses, the renewal notice for the Domain Name was never received by the Complainant and its registration consequently lapsed. In this way, the Respondent was able to register the Domain Name when it became available. Complainant states that it only became aware that another company had registered the Domain Name when a new supplier called to ask what had happened to the Complainant's web site. Complainant states that it then checked the web site at <kidswindow.co.uk> and could see that it was listing paid links to various children's clothing sites.

The Complainant contends that there is no reason whatsoever to associate the words "kids window" with children's clothing unless it is by association with the Complainant's own primary name and mark, THE KIDS WINDOW. Further, Complainant states it is not uncommon for people to refer to it as "Kids Window" and drop the "the" element of its name when in conversation or correspondence. The Complainant contends it is extremely likely that many people will do the same when typing its name into a browser (which is why it initially registered the Domain Name). Indeed, the Complainant states that it regularly comes across incorrect links to <kidswindow.co.uk> rather than <thekidswindow.co.uk>, particularly from new suppliers. An example (uncorrected) can be found on a supplier of one of the Complainant's pushchair accessories at [www.multibrella.co.uk/stockists.asp](http://www.multibrella.co.uk/stockists.asp). Checking the precise phrase <kidswindow.co.uk> on Google produces nearly 200 listings, all but one of which relate to the Complainant's own site (the exception being

the Respondent's own listing as crawled by Google). Some listings contain a review of the Complainant's web site, although people have mistakenly written the wrong domain name in their review or an old uncorrected link to the Complainant's site.

The Complainant observes that Respondent also has a "domain for sale" notice on its web site, which Complainant has contacted several times via email. On each occasion, Complainant has attempted to negotiate a reasonable price for transfer, but the Respondent has refused to go much below £1000 for the Domain Name, which is far in excess of its worth unless the objective is to extort a high price.

Finally, the Complainant notes that Respondent has had three DRS cases decided against it, a fact which has been confirmed by Nominet.

### Respondent's Response

The Respondent submitted a short reply, which provides in full as follows:

"Dear Sirs, We bought this domain name in good faith for business use not having your client in mind (but the generic combination of Kids & Window). There is no trademark over the our [sic] domain name "kids Window", and the domain is registered since the 26th of July 2004 and supplies kids clothing information since then. We do not see any reason for confusion with the complainant after 3.5 years that our website is working. Best regards, Balata.com"

Nominet sent a cautionary letter to the Respondent on 15 November 2007 from the Chairman of the DRS Expert Panel, providing a note that a short response may not fully or properly explain the Respondent's position. The Respondent did not provide any additional submission.

### Complainant's Reply

The Complainant submitted a Reply in which it made three points. First, in reply to the Respondent's contention that it bought the Domain Name without knowledge of the Complainant, Complainant states that "given that we were (and remain) top of Google for 'kid's clothing' and all other major kids clothing search terms this is, we would suggest, not true." Second, the Complainant disputes that the Respondent's site provides "kids clothing information." Instead, Respondent has no information whatsoever on its site, but "just have a series of outward affiliate links." Complainant argues that you would expect any information site to have several hundred (if not thousands) of third-party links to them after 3.5 years, but the Respondent's site has none. Finally, the Complainant asserts that if the Respondent truly thought there was no confusion between them, why would Respondent post a sale banner on its site for nearly £1000? The implication of the "after 3.5 years" comment is that time has passed since the Respondent bought the domain; however, Complainant asserts that it wasted time making attempts to buy the Domain Name back from the Respondent, but has been unwilling to pay such a high price.

## **6. Discussion and Findings:**

### General

In order to succeed in these proceedings, paragraph 2(b) of the DRS Policy requires the Complainant to prove on the balance of probabilities that both elements of the test set out in paragraph 2(a) are present:

- 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

The Complainant has submitted documentary evidence to establish that it has Rights in its THE KIDS WINDOW brand name and trade marks, which pre-date the Respondent's registration of the Domain Name.

The Domain Name contains the distinctive part of the Complainant's THE KIDS WINDOW mark, omitting only the generic element "the". The words KIDS WINDOW are distinctive in their placement together and in relation to children's clothing.

The Domain Name is therefore similar to a name or mark in which the Complainant has Rights. The Complainant has established the first element of the test in paragraph 2(a) of the DRS Policy.

### Abusive Registration

As to whether the Domain Name registration is abusive in the hands of the Respondent, paragraph 1 of the DRS 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 was unfairly detrimental to the Complainant's Rights."

The Expert should take into account all relevant facts and circumstances in determining whether the Domain Name is an Abusive Registration.

The Expert is persuaded by the Complainant submissions that the Domain Name registration and use is abusive. First, the Expert agrees with the Complainant's contention that there is no reason to associate the words "kids window" with children's clothing unless it is by reference to the Complainant's own name and mark, THE KIDS WINDOW. On the evidence before the Expert, the Domain Name <kidswindow.co.uk> is specifically referable to the Complainant, and it is difficult to imagine that the Respondent could have registered the Domain Name and then presented a web site with links to other sites selling children's clothing without having the Complainant in mind. The Expert does not accept the Respondent's assertion that it bought the Domain Name "in good faith for business use not having your client in mind..."

Second, the Domain Name resolves to a web site with links to other third-party sites marketing children's clothing. The Respondent's site is clearly taking advantage of the Complainant's reputation and goodwill developed in on-line commerce, and the Complainant has cited instances of confusion that are detrimental to the Complainant's business. Third, the Respondent lists the Domain Name for sale and

seeks a price far in excess of its out-of-pocket costs directly associated with acquiring the Domain Name.

Finally, the Experts refers to paragraph 3(c) of the DRS Policy, which provides as follows:

“There shall be a presumption of Abusive Registration if the Complainant proves that Respondent has been found to have made an Abusive Registration in three (3) or more Dispute Resolution Service cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraph 4 (c)).”

The Respondent here has been found to have made an abusive registration in seven other DRS cases: DRS 04990; DRS 03816; DRS 03470; DRS 02863; DRS 02462; DRS 02455; DRS 02370. When considered in view of the circumstances discussed above, the Expert finds that the Respondent has failed to overcome the presumption of Abusive Registration.

Accordingly, the Panel finds on the balance of probabilities that the Domain Name, in the hands of the Respondent, is an Abusive Registration

## **7. Decision**

The Expert finds that the Complainant has Rights in respect of a name or mark which is similar or identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that the Domain Name, <kidswindow.co.uk>, be transferred to the Complainant.

Christopher Gibson

24 December 2007