

# NOMINET UK DISPUTE RESOLUTION SERVICE

## DRS 5307

Perfetti Van Melle Benelux B.V v Amit Sharma

Decision of Independent Expert

### 1. Parties:

Complainant: Perfetti Van Melle Benelux B.V.

Address: Zoete Inval 20, Breda

Postcode: 4815 HK

Country: NL

Respondent: Amit Sharma

Address: 24 Southdown Crescent

Cheadle

Cheshire

Postcode: SK8 6EQ

### Disputed Domain Name

fruitelli.co.uk ("the Domain Name")

### 2. Procedural Background:

The Complaint was lodged with Nominet in full on 13 December 2007. No Response was filed. On 23 January 2008, 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").

Cerryg Jones, the undersigned, ("the Expert") confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as expert in this case

and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality.

**3. Outstanding Formal/Procedural Issues (if any):**

There are no other outstanding procedural issues that arise.

**4. The Background:**

The Complainant is the owner of the well-known FRUITTELLA confectionary brand. It is the proprietor of numerous trade mark registrations and applications for FRUITTELLA word and/or device around the world, covering mainly products within international class 30. Various documents evidencing ownership have been submitted with the complaint including a complete list of all the Complainant's trade mark registrations and applications for FRUITTELLA, together with copies of various registration certificates for FRUITTELLA including a UK word mark dating back to 1956, a Community word mark of 1996 and a UK word mark for FRUITTELLA MAXX of 2001.

The Complainant says that the total net sales of FRUITTELLA products in 2006 amounted to USD 82.661.000 and that advertising costs amounted to USD 8.147.000. Printouts from the Complainant's Group web site [www.perfettivanmelle.com](http://www.perfettivanmelle.com) and the web sites [www.fruittella.com](http://www.fruittella.com) and [www.fruittellaland.com](http://www.fruittellaland.com), specifically dedicated to FRUITTELLA and illustrating the products and promotions, have also been annexed to the Complaint.

In the UK it is claimed that FRUITTELLA has been used for more than 20 years; local net sales in 2006 amounted to € 7.500.000 and the advertising expenses to €1.000.000. The UK 2007 campaign proposals for FRUITTELLA prepared for the Complainant's Group by the company MediaVest (Manchester) were also submitted with the complaint 4.

Nothing is known about the Respondent, who failed to file a Response. When the Domain Name is entered into a user's browser, the website of a business known as

123-reg.co.uk appears, with the message that the disputed domain name "...has been registered on behalf of a client by 123-reg.co.uk". 123-reg.co.uk offer a variety of web related services, and is part of Pipex Communications Limited.

## 5 The Complainant's submissions

The Complainant alleges the following:

- 1 That the Respondent has not been commonly known by the Domain Name and to the Complainant's knowledge he has no rights based upon tradition or legitimate prior use of the Domain Name.
- 2 That both words FRUITTELLA and FRUITELLI are neither generic nor descriptive.
- 3 That FRUITTELLA is a famous brand in Great Britain.
- 4 That the Respondent's aim is to take unfair advantage of the Complainant's rights given the similarity between the FRUITTELLA mark and the Domain Name.
- 5 That to the Complainant's knowledge there is no evidence of the Respondent's fair use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services.
- 6 That when, and if, the Respondent uses the Domain Name, his only interest may well be to attempt to exploit the fame of the Complainant's FRUITTELLA products without needing to bear any advertising or promotional costs.
- 7 That the Complainant has invested high sums of money in the advertisement of the brand FRUITTELLA.
- 8 That the Complainant has never received any information about the existence of the Respondent and has never had any connection, affiliation or commercial relationship with him.
- 9 That the Respondent has never approached the Complainant to inform of his intention to register the Domain Name or to ask for consent to its registration,

which he should have done if his intention were to use the Domain Name in good faith.

- 10 That due to the strict similarity between the words FRUITTELLA and FRUITELLI, consumers may think there is a link between the Complainant's products and the Domain Name.
- 11 That searching the Internet for FRUITTELLA products, internet users may also run the risk of misspelling and mistyping the word FRUITTELLA and end up on the Respondent's website.
- 12 That the Respondent could not be unaware of this risk as he could not be unaware of the existence of the Complainant's products FRUITTELLA when he chose to register the Domain Name.
- 13 That FRUITTELLA is also present in Wikipedia®

## **6 Discussion and findings**

The first question that needs to be decided is whether the Complainant has "rights," (as defined by the DRS Policy), in respect of a name or mark which is identical or similar to the Domain Name. Clearly the Complainant has satisfied this test, the only difference being the last letter.

In the absence of a Response, this matter, to my mind, is straightforward. I have formed the view that, on a balance of probabilities, the Domain Name is a deliberate misspelling of, and confusingly similar to, the Claimant's well known FRUITELLA trade mark. The only conclusion that I can draw on the submissions and evidence before me is that such misspelling is designed to misleadingly attract internet traffic searching for information about the Complainant's FRUITELLA brand to the Respondent's website. As such, the Domain Name constitutes an Abusive Registration as it has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

## **8 Decision:**

In the light of the foregoing findings, namely that the Complainant has rights in respect of a name or mark which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an abusive registration, I direct that it be transferred.

Cerryg Jones

12 February 2007