

Nominet UK Dispute Resolution Service

DRS 07789

Mamas and Papas Ltd.

and

D. Aimee

Decision of Independent Expert

1 Parties

Complainant: Mamas and Papas Ltd.

Address: Colne Bridge Road
Huddersfield
West Yorkshire

Postcode: HD5 0RH

Country: United Kingdom

Respondent: D. Aimee

Address: Trent House
3 Sewardstone Road
Waltham Abbey
Essex

Postcode: EN9 1NA

Country: United Kingdom

2 Domain Name

[mamasandpappas.co.uk]

3 Procedural History

- 3.1 On 3 December 2009 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy (“the Policy”) and DRS Procedure (“the Procedure”). Nominet notified the respondent on 4 December 2009, but received no response. The complainant requested referral of the matter for expert decision under the Procedure, and on 19 January 2010 paid the applicable fee.
- 3.2 I, Carl Gardner, was appointed as expert on 22 January 2010. I have made the necessary declaration of impartiality and independence.

4 Factual background

- 4.1 The complainant is one of a group of companies which since 1980 has been in the wholesale and retail nursery products business, under the brand name “Mamas and Papas”. The group as a whole operates retail stores in the UK and Ireland, the first of which opened in 1998. Its franchisees operate stores in other countries and the group wholesales nursery products internationally.
- 4.2 The respondent registered the domain name on 27 October 1999.

5 Parties’ Contentions

Complainant

- 5.1 The complainant argues that it is a household name in nursery products. Its holding company has UK and EU trade mark registrations for marks containing the words “Mamas” and “Papas” and the complainant and/or its associated companies have been using this company name and trading name since 1980.
- 5.2 It argues that the domain name was primarily registered for the purpose of selling it to the complainant or a competitor for more than the respondent paid for it. In support of this it has produced screenshots from the website <sedo.com> showing that the domain name has been offered for sale.
- 5.3 It argues that the domain name has been used by the respondent in a way likely to confuse people into thinking it was controlled by the complainant; and that the respondent deliberately registered a domain name confusingly similar to the complainant’s company name, trade name and trade marks for the purpose of unfairly disrupting the complainant’s business.
- 5.4 The complainant argues that the respondent is “typo-squatting” with the domain name, intending to draw customers away from the complainant’s website and generate revenue through pay-per-click advertising.

Respondent

5.5 There has been no response from the respondent.

6 Discussion and Findings

General

6.1 Under paragraph 2(a) of the Policy a complainant must show on the balance of probabilities that:

- it has rights in respect of a name or mark which is identical or similar to the domain name, and that
- the domain name, in the hands of the respondent, is an abusive registration.

Rights

6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.

6.3 The complainant has produced documentary evidence of trade marks registered by companies in its group since 1999 in respect of various classes of nursery products. It has produced evidence from the UK Intellectual Property Office relating to the trade mark "Mamas & Papas", and from the Office for Harmonization in the Internal Market of EU trade marks in respect of the words "Mamas & Papas".

6.4 The complainant has also produced evidence that in 1996 it registered the domain name <mamasandpapas.co.uk>, which it continues to use.

6.5 It appears from the evidence that the complainant has been in business for many years using the Mamas & Papas brand name.

6.6 At the third level (i.e. disregarding ".co.uk"), it is natural to read the domain name as consisting of three words, each of which corresponds directly to the three elements of the complainant's trademarks and brand, and has the same meaning. Read naturally aloud, the domain name sounds identical to the natural reading of the complainant's trademark and brand. The domain name is also spelled almost identically to the complainant's domain name. In my view, the addition of the letters "m" and "p" do not make the domain name dissimilar to the complainant's trademark, brand and domain name. Nor in my view does it make a difference that the domain name contains the word "and" rather than the symbol "&".

6.7 In those circumstances I am satisfied that the complainant has rights in respect of a name or mark which is similar to the domain name.

Abusive Registration

6.8 Under paragraph 1 of the Policy, abusive registration means a domain name which either:

- 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
- has been used in a manner which took unfair advantage of or was unfairly detrimental to the complainant's rights.

This definition obviously covers both the time of registration, and later use.

- 6.9 Under paragraph 3(a)(i)(A) of the Policy, it may be evidence of abusive registration if there are circumstances indicating that the respondent has registered or otherwise acquired the domain name primarily for the purposes of selling, renting or otherwise transferring it to the complainant for valuable consideration in excess of the costs directly associated with acquiring or using it.
- 6.10 But deciding to sell a domain name after registration, even for profit, is not in itself abusive use. The screenshot in itself does not show the respondent intended to sell to the complainant or a competitor, or that sale was his or her primary purpose.
- 6.11 On the other hand, the respondent has provided no explanation of why he or she registered the domain name.
- 6.12 In the circumstances I make no finding about whether the respondent registered the domain name with the intention that it be sold to the complainant.
- 6.13 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the respondent is using the domain name in a way which has confused or is likely to confuse people into believing it is connected with the complainant may be evidence of abusive registration.
- 6.14 Given that the domain name is so similar to the complainant's brand, domain name and trade marks, I am satisfied that initial interest confusion is likely between the domain name and the complainant.
- 6.15 Finally, I have considered generally whether this is an abusive registration under paragraph 2(a)(ii) of the Policy. The complainant has produced evidence that the respondent has connected the domain name to a parking page carrying links, including links to competitors of the complainant in the nursery goods market. The complainant has also produced evidence suggesting the respondent may have gained financially from visitors' clicking on those links.
- 6.16 In my view, using a domain name which is so similar to the complainant's brand, domain name and trade marks to link to competitor sites in this way is to take unfair advantage of the complainant's rights.
- 6.17 It follows that on the evidence before me, the respondent appears to have used the domain name in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant's rights.

- 6.18 It is of course for the complainant to make good its case. However, for the reasons I have given the evidence before me establishes a prima facie case of abusive registration. The respondent has provided no response.
- 6.19 In those circumstances therefore I am satisfied on the balance of probabilities that the domain name, in the hands of the respondent, is an abusive registration.

7 Decision

- 7.1 I find that the complainant has rights in 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.
- 7.2 The complaint is upheld. I direct that the domain name be transferred to the complainant.

Signed: Carl Gardner

Dated: 9 February 2010