

DISPUTE RESOLUTION SERVICE

D00009318

Decision of Independent Expert

Sharp Electronics (U.K.) Limited

and

PanaEpos

1. The Parties:

Complainant: Sharp Electronics (U.K.) Limited
4 Furzeground Way
Stockley Park, Uxbridge
Middlesex
United Kingdom
UB11 1EZ
United Kingdom

Respondent: PanaEpos
Hall Farm House
Sloley Road
Worstead
Norfolk
NR28 9RS
United Kingdom

2. The Domain Names:

sharp-epos.co.uk
sharppos.co.uk

3. Procedural History:

The Complaint was received by Nominet on 22 November 2010. Nominet validated the Complaint and sent a copy to the Respondent.

The Response was received by Nominet on 1 December 2010 and a copy sent to the Complainant.

The Reply was received by Nominet on 8 December 2010 and a copy sent to the Respondent.

On 11 January 2011 the Complainant paid Nominet the required fee for a full decision of an Expert pursuant to the Nominet UK Dispute Resolution Service Policy ("the Policy").

Nominet invited the undersigned, Jason Rawkins ("the Expert"), to provide a decision on this case and duly appointed the undersigned as the Expert with effect from 27 January 2011.

4. **Factual Background**

The Nominet records show that the Domain Names were registered on 2 January 2007.

Based on the parties' submissions (see section 5 below) and a review of the materials annexed to the Complaint and the Reply, set out below are the main facts which I have accepted as being true in reaching a decision in this case:

- (1) The Complainant is the owner of European trade mark (CTM) registrations for SHARPEPOS and SHARPPOS, both dating from 2009. It also has a licence to use a number of UK trade mark registrations for SHARP which date back to 1974 and 1986.
- (2) In addition, the Complainant has made widespread use of the terms SHARPEPOS and SHARPPOS for over 30 years.
- (3) At the time when the Respondent registered the Domain Names in 2007, he was an authorised reseller of the Complainant. The Complainant's standard reseller terms and conditions did not give any express permission for the Respondent to register domain names incorporating SHARP trade marks.
- (4) The Respondent is still a reseller of the Complainant's products, but no longer an authorised reseller.
- (5) The Complainant has many authorised resellers, but does not authorise any one of them to use the SHARP trade marks as a trading name or domain name.
- (6) The Domain Names resolve to a website of the Respondent, which is headed "SHARP-EPoS" and uses a red and white colour scheme. There is a reference in small typeface at the bottom of the home page to Sharp-Epos being a division of PanaEpos Ltd.
- (7) The Respondent's website sells genuine Sharp products; but also a small number of third party products, including Citizen printers.
- (8) On being contacted by the Complainant, the Respondent offered to sell the Domain Names to the Complainant for around £100,000.

5. **Parties' Contentions**

Complainant

The Complainant's submissions are as follows:

1. The Complainant has rights in a name which is identical or similar to the Domain Names:

The Complainant's submissions are reproduced below:

“(1) The Complainant is a wholly owned subsidiary of the Sharp Corporation (Sharp Kabushiki Kaisha). The Sharp group is a world leading manufacturer and retailer of high quality electronics and electrical goods. The Sharp Corporation was established in 1912 and has been trading, initially from Japan, and now across the world under the SHARP trademarks.

(2) The Complainant was incorporated on 10 November 1969. The Complainant has been trading under the SHARP trademarks since its incorporation and during this period has invested heavily in creating and maintaining its strong and distinctive brand.

(3) The Complainant is a licensee within the territory of the U.K. and Europe of all trademarks owned by the Sharp Corporation and other companies within the Sharp group. As a result of using the SHARP trademarks, the Complainant has a significant reputation both in the UK and internationally in the SHARP trademarks which it has developed to denote the superior quality of the goods produced by the Complainant and whose quality is recognised by the public. The Complainant spends a considerable amount on marketing each year in order to maintain its brand and reputation, for example in the year from 1 April 2009 to 31 March 2010 the Complainant spent £85,000 on marketing in respect of its Electronic Point of Sale (EPOS) and Point of Sale (POS) equipment.

(4) In order to protect both its considerable investment and the goodwill embodied in the SHARP brand, the Complainant has registered a number of trademarks incorporating the word SHARP. The Complainant's trademark portfolio includes the following marks, copies of which are [annexed to the Complaint]:

(a) A registered UK trademark for SHARPSOFT (registration number: 2514817) in application to a wide range of electrical goods under class 9, including cash registers and electronic point of sale terminals;

(b) A registered Community Trade Mark (registration number E8524027) for the mark SHARPEPOS in class 9 and, a registered Community Trade Mark (registration number E8521064) for the mark SHARPPPOS in class 9.

(5) The Complainant is a licensee of the following trademarks registered by Sharp Corporation (Sharp Kabushiki Kaisha), copies of which are [annexed to the Complaint]:

(a) On 23 April 1974, Sharp Kabushiki Kaisha registered two UK trademarks for the mark SHARP (registration numbers: 1028391 and 1028389) covering applications to a wide range of electronic products for the consumer market under classes 9 and 11;

(b) In December 1986, Sharp Kabushiki Kaisha registered further UK trademarks for the mark SHARP (registration numbers: 1296045 and 1296863) for goods in class 37 and class 9. Sharp Kabushiki Kaisha also hold an international mark under the Madrid Protocol for SHARP (registration number: U00000929233) registered for goods under classes 1, 2, 7, 9, 11, 16 and 19 and a Community Trade Mark (registration number E124511) registered in April 1996 for the mark SHARP in application to goods under classes 2, 7, 8, 9, 10, 11, 14 and 16.

(6) The manufacture and sale of EPOS/POS equipment forms a significant part of the Complainant's business. This is evidenced by the Complainant's turnover for the year 1 April 2009 to 31 March 2010 in respect of its EPOS and POS equipment

range which amounts to £3,415,405. The Complainant is considered to be a market leader in this sector.

(7) In addition to the registered trademarks, the Complainant has unregistered rights in the terms SHARPEPOS and SHARPPOS and has undertaken widespread commercial use of these distinctive marks since the 1970s, before they were registered as community trade marks. Evidence of this use and an indication of the extent of such use is detailed in the marketing literature which is [annexed to the Complaint].

(8) The Complainant has also registered the following domain names *www.sharp-pos.co.uk* and *www.sharp.co.uk* and the Sharp group companies own other related domain names such as *www.sharp-pos.biz*, *www.sharp-pos.org*, *www.sharp-pos.com* and *www.sharppos.com*.

(9) In accordance with paragraph 2(a)(i) of the Policy, the Complainant submits that the Domain Names are identical or similar to the Complainant's rights for the following reasons:

(a) Each of the Domain Names incorporates the entirety of the SHARP registered trademarks which are licensed to the Complainant;

(b) The addition of the terms EPOS and POS in the Domain Names serve merely as descriptive terms when taken as single words. The Complainant submits that relevant consumers will understand the nature of these terms as acronyms and will see the term SHARP as the dominant feature of the domain names.

(c) The domain name, *sharppos.co.uk*, incorporates identical wording to the Complainant's registered rights in the registered Community Trademark: SHARPPOS.

(d) The domain name, *sharp-epos.co.uk*, incorporates identical wording to the Complainant's registered rights in the registered Community Trademark: SHARPEPOS. The Complainant relies on the decision in *PartyGaming Plc v Elsie Sorilla (DRS02783)* as authority for the point that it is appropriate to discount a hyphen in these circumstances. Again, the Complainant submits that the SHARP element is the distinctive element of the Domain Names."

2. The Domain Names are Abusive Registrations in the hands of the Respondent:

Relevant sections of the Complainant's submissions are reproduced below:

"Factual background

(1) At the time the Domain Names were registered, the Respondent was acting as a reseller of the Complainant, selling products under the SHARP trade marks.

(2) Until recently the Respondent had acted as a reseller of the Complainant's products for a period of at least ten (10) years. In the course of this reselling relationship, the Complainant has always dealt with the Respondent through the company, *PanaEpos Limited*.

(3) The Domain Names were registered by the Respondent in the name of *John Mills* trading as *PanaEpos*, on 2 January 2007.

(4) John Mills is a Director of PanaEpos Limited. PanaEpos Limited is a company incorporated in England and Wales, company number 05683345 having its registered office at 7 Hollybush Road, North Walsham, Norfolk, NR28 9XT.

(5) The Complainant understands that the Domain Names have been, at all times since their registration, used by PanaEpos Limited in conducting its business.

(6) The Complainant first became aware of the Respondent's use of the Domain Names including the SHARP trademarks in June 2008.

(7) The Complainant contacted the Respondent by way of letter dated 30 October 2009 and addressed to the Respondent's Registrant address as revealed on a Nominet WHOIS search. This letter expressed concern at the unauthorised use of the SHARP trademarks and required the Respondent to take steps to transfer the disputed domain names to the Complainant.

Reselling relationship

(8) The reselling relationship between the Complainant and Respondent, which was ongoing for a period of at least ten (10) years has been conducted on the Complainant's standard reseller terms and conditions, a copy of which is [annexed to the Complaint]. Clause 9 of the terms and conditions confirms that all intellectual property rights in or to any of the goods or services supplied under the reseller agreement will remain with the Complainant, therefore:

(a) there is no express or implied term granting the Respondent the right to use any of the SHARP trademarks in registering a domain name registration or in operating a website; and

(b) the Domain Names were registered by the Respondent without any authority from the Complainant at any point.

(9) Given the number of resellers which it engages, the Complainant does not authorise any single retailer to use the SHARP trademarks for its own business activities, whether as a trading name or as a domain name.

(10) The Complainant notes that under section 10(6) of the Trade Marks Act 1994, any person may make use of a registered trade mark for the purpose of identifying goods of those of the proprietor or licensee.

(11) However the Complainant submits in accordance with section 10(6) of the Trade Marks Act 1994 that the Respondent's use of the SHARP trademarks in registering the Domain Names is not in accordance with honest commercial practices and takes unfair advantage of and/or is detrimental to the distinctive character or repute of the SHARP trademarks, for the reasons set out below.

[Main submissions]

(12) As stated, at the time of registration, the Complainant's standard reseller terms and conditions upon which the parties were contracting contain no express or implied term allowing the Respondent to register domain names therefore the Respondent did not have the right to register the Domain Names.

(13) As a result of there being no implied or express term and no consent at any time to register the Domain Names in the course of the reselling relationship, the Complainant submits that the Respondent's registration of the Domain Names was abusive both at the time of registration and has continued to be abusive since.

(14) The Complainant submits that its rights in the Sharp registered trademarks as discussed above predate the date of registration, and that given the Respondent's position as a reseller of the Complainant's goods, he was aware of these pre-existing trademarks and rights.

(15) In accordance with paragraph 3(a)(i)A of the Policy, the Complainant submits that the Respondent's primary purpose for registering the Domain Names was to sell the Domain Names to the Complainant for valuable consideration in excess of the Respondent's documented out of pocket costs directly associated with acquiring or using the Domain Names, given that:

(a) The Respondent has suggested that the Complainant purchase the Domain Names for a fee of £105,000, being equal to a sum of three times the annual income of the site, which the Respondent values at £35,000.

(b) However, the Complainant asserts that given their rights in the SHARP trademarks, the Domain Names should be rightfully transferred without payment.

(16) In accordance with paragraph 3(a)(i)B of the Policy, the Complainant submits that the Respondent's primary purpose for registering the Domain Names was also to prevent the Complainant or other companies in the Sharp group from registering domain names reflecting the SHARP trademarks, in which the Complainant has rights, given that:

(a) the Respondent has also registered the domains at www.sharp-epos.com, www.sharp-epos.org and www.sharp-epos.net which are currently subject to proceedings under the ICANN dispute resolution procedure. The Complainant submits that these registrations provide further proof that the Respondent's aim behind registering the Domain Names is as a blocking registration; and

(b) the Domain Names serve merely to redirect web traffic to the web site at www.sharp-epos.com.

(17) In accordance with paragraph 3(a)(i)C of the Policy, the Complainant submits that the Respondent has further primarily registered the Domain Names for the purposes of unfairly disrupting the business of the Complainant for the following reasons:

(a) The Domain Names serve purely to redirect web traffic to the Respondent's web site at www.sharp-epos.com

(b) The Respondent is using the web site at www.sharp-epos.com for the sale of competitors' goods. Attached [to the Complaint] is a screen shot from the website www.sharp-epos.com which provides evidence that the Respondent is selling the goods of Citizen, who is a recognised competitor of the Complainant.

(c) This use is unfairly disrupting the business of the Complainant by taking unfair advantage of the Complainant's rights in the Sharp trademarks in order to attract customers to the web site, before attempting to switch consumers from Sharp goods to goods of competitors, which results in a loss of trade to the Complainant, constituting an unfair disruption to the Complainant's business.

(18) In accordance with paragraph 3(a)(ii) of the Policy, the Complainant submits that the Respondent has used the Domain Names in a way which has confused or is likely to confuse people or businesses into believing that the Domain Names are registered to, operated by or authorised by the Complainant. In support of this contention, the Complainant submits that:

(a) The Domain Names serve purely to redirect web traffic to the website operated by the Respondent and located at www.sharp-epos.com.

(b) The Respondent's website at www.sharp-epos.com uses the Complainant's trade mark (registration number 1296863) and the Complainant's distinct trade livery (being a red and white colour scheme).

(c) The Respondent's use of the Complainant's distinctive trade livery does not meet the Complainant's high standards of web design, and, given the likelihood of confusion as to the registration or operation of the web site at www.sharp-epos.com and the Domain Names, the Complainant submits that this use of the Complainant's trade mark and appropriation of the Sharp livery causes unfair detriment to the Sharp trademarks and brand.

(d) The home page of the website at www.sharp-epos.com states that Sharp-Epos is a division of PanaEpos Limited. This suggestion that Sharp-Epos is a division of PanaEpos infers that the Complainant and/or the Sharp group companies are an affiliated company of PanaEpos Limited. The Complainant submits that this is evidence of the Respondent seeking to take unfair advantage of the Complainant's reputation in the Sharp trademarks and unregistered rights.

(e) The website at www.sharp-epos.com makes no further reference to PanaEpos Limited, which provides further evidence that a consumer would be confused as to the origin of the website.

(f) The Complainant submits that the Respondent's use of the website, as detailed above, has created and is likely to further create confusion on the part of consumers or businesses into believing that the disputed domain names are owned or authorised by the Complainant.

(19) In accordance with paragraph 3(a)(iii) of the Policy, the Complainant submits that the Respondent is engaged in a pattern of registrations which correspond to the SHARP trademarks in which the Complainant has rights.

(20) The Complainant is currently bringing proceedings with WIPO in relation to the domain names, sharp-epos.com, sharp-epos.org and sharp-epos.net which the Respondent has registered.

(21) WHOIS searches showing the Respondent's ownership of the sharp-epos.com, sharp-epos.org and sharp-epos.net domain names are [attached to the Complaint].

(22) The sharp-epos.org and sharp-epos.net domain names serve purely to redirect to the website at www.sharp-epos.com, and the Complainant submits that this provides further evidence of the Respondent's intention to take unfair advantage of the Sharp trademarks to the detriment of the Complainant and the Sharp group.

(23) The Complainant would submit that the Respondent has not used or made demonstrable preparations to use the Domain Name or a similar domain name in connection with a genuine offering of goods or services given that:

(a) the Respondent does not offer any goods or services from the Domain Names given that they serve purely to redirect to the Respondent's website at www.sharp-epos.com; and

*(b) the Complainant would rely on the decision in *Seiko UK Limited v Designer Time/Wanderweb* (DRS 00248), and its subsequent appeal, as authority for the point*

that the registration by a reseller of a domain name incorporating registered trademarks of the supplier is capable of being an abusive registration, particularly where the domain names are liable to be perceived as being the Complainant's official or approved websites i.e. being the official Sharp EPOS webshop rather than as in reality being merely a reseller (now ex-reseller) of Sharp EPOS products.

(24) The Complainant would submit that the Respondent has not been commonly known by the Domain Names or legitimately connected with a mark which is identical or similar to the Domain Names. The Respondent has at all times traded through PanaEpos Limited and from the PanaEpos website (www.panaepos.com), and has referred to PanaEpos Limited on the website at www.pana-epos.com.

(25) The Complainant submits that the Respondent has not made a legitimate non-commercial or fair use of the Domain Names, given that they have since the time of registration served purely as redirecting sites to the website at www.pana-epos.com."

Respondent

Relevant sections of the Respondent's submissions are set out below:

"(1) I started in the Epos/Cash register business at the age of 17, some 28 years. I sold, programmed and installed Sharp, Casio & Geller cash registers.

(2) [Later] I worked for ICL, Shell UK Oil & Panasonic. After my time at Panasonic came to a natural end after 7 years, I started PanaEpos and sold Panasonic Epos terminals to many customers. With Panasonic the range is limited to Touch Screen terminals only, so I looked at Sharp who had the full range of machines from the basic till to the Touch Screen terminals, who agreed to give me an account, so we formed a business relationship which worked well. I registered the domain names (Sharp-Epos.co.uk & Sharppos.co.uk) and start selling on the internet, at which time I must point out that Sharp were fully aware of my use of the domain names and made no remarks or ever said anything.

(3) We started a pay per click campaign with Google and sold several machines, we also attended the Bar show (Bar 08) which Sharp paid some money towards in the form of sponsorship of approximately £2000.00. Sharp even sent along a Sharp ECR Rep to help on the stand.

(4) Whilst we do still have a direct account with Sharp, we get better pricing from Sharp distributors such as SMS in Cambridge or YCR in Yorkshire.

(5) Last year I received a letter from Sharp's legal department stating that they wanted my domain names, I told them that I would not give them to them, as we turned over approx £30,000 p.a. from this website. Their legal department have stated in their letter that I asked for £105,000 which is not true at all, I was only saying that I turned over approximately £30,000.

(6) I understand that they have a few areas of complaint / concern:

(a) the colour of the website is red and Sharp's standard colour is red- but we have never passed ourselves off as Sharp.

(b) the use of the Sharp logo- but as a direct account holder we are allowed to use this, it is in the terms and conditions.

(7) There is 90% of Sharp products on the website, and some third party ribbons and till rolls which Sharp do not manufacture. We did have a Citizen CBM1000 Thermal Printer on there as at the time Sharp did not have their own printer, and they still do not, but they have put their logo on a cheap Chinese imported printer.

(8) I believe that Sharp have just registered the trademark Sharp Epos after we had registered the domains.

(9) It states my company name of PanaEpos on the footer of every page on my website.”

Reply

The Complainant's Reply submissions are as follows:

“(1) The Complainant was not aware of the Respondent's use of the disputed domain names ("the Domain Names") until June 2008.

(2) Although the Respondent was formally a reseller for over ten years, the only activity on his reselling account took place in 2007 when the Complainant made an attempt to develop the Respondent as an active reseller and allocated £1500 of marketing money and support in respect of an event attended by the Respondent's company Paneopos during June 2007. This funding was provided in exchange for the Respondent exhibiting the Complainant's products at the event. It is common practice for the Complainant to provide such financial support to develop resellers and can in no way be considered to be a licence granting the Respondent the right to register the Domain Names.

(3) The Respondent no longer has a direct account with the Complainant. The respondent's credit account had not been used since November 2007 and his credit limit was removed in January 2009. The account is therefore a lapsed account.

(4) The Complainant's legal representative contacted the Respondent by telephone on 19 January 2010 further to a message she had received from him. The Respondent stated that he was prepared to fight any claim made by the Complainant unless the Complainant was prepared to make him a commercial offer for the Domain Names and he suggested three times the annual income from the site being £105,000. A file note setting out the details of the telephone call is [annexed to the Reply].

(5) The Respondent did not telephone to request a meeting to discuss the Domain Names on 30 November 2010; instead the Respondent telephoned the Complainant's in-house counsel on Monday 29 November 2010 further to receiving notice of the Complaint. During the call the Respondent told the Complainant that the Domain Names were for sale for £10,000. He threatened that unless the Complainant bought the Domain Names and withdrew the Complaint, he would undertake a pharming attack in respect of the Domain Names before transferring them to the Complainant, in the event that the Complainant was to win the dispute. Asked what he meant by 'pharming', the Respondent replied that the Domain Names would be linked to a myriad of porn sites, which would render them useless to the Complainant and there would be nothing that the Complainant could do about this. The Complainant told him that they were not prepared to pay and would continue with the Complaint. The Respondent replied that he makes £30,000 worth of business a year using the Domain Names although he buys the Complainant's stock from dealers and not directly from the Complainant and he threatened to stop this too.

(6) *The Complainant disputes that the Respondent has the right to use the Complainant's logo pursuant to the Complainant's reseller terms and conditions. The factual position is as stated in the Complaint.*

(7) *The Respondent states that he sells competitor's products on his websites as the Complainant "didn't have their own printer and they still do not, but they have put their logo on a cheap Chinese imported printer". The Complainant refutes that this is the case. The Complainant sells mostly SHARP branded printers and also a line of printers manufactured by Star Micronics and sold under the Star Micronics trade mark.*

(8) *The Complainant filed its trade mark application in respect of the name 'SHARPEPOS' on 2 September 2009, however it had earlier rights in the mark as set out in the Complaint.*

(9) *The Complainant has not stated that it owns the domain name sharp.com.*

(10) *The Complainant disputes the Respondent's statement that the Complainant did not telephone the Respondent to discuss the issues in connection with the Domain Names. A copy of an email sent by the Complainant's reseller manager (Craig Bloomfield) to the Complainant's manager in charge of EPOS products (Patrick Young) confirms that Mr Bloomfield telephoned the Respondent to discuss the issues and is [annexed to the Reply].*

(11) *The Complainant considers that the Respondent's behaviour as referred to above is further evidence that demonstrates that the registration of the Domain Names by the Respondent is an abusive registration."*

6. Discussion and Findings

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it 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 (as defined in paragraph 1 of the Policy).*

Complainant's Rights

The Complainant owns CTM (European trade mark) registrations for SHARPEPOS and SHARPPOS. It is also a licensee of various UK trade mark registrations for SHARP.

For many years the Complainant has also traded in the UK under the SHARP name and used the terms SHARPEPOS and SHARPPOS.

In light of the above it is clear that the Complainant has rights in the marks and names SHARP, SHARPEPOS and SHARPPOS.

Disregarding the .co.uk suffixes and the hyphen in the first Domain Name, the Domain Names are identical to the marks SHARPEPOS and SHARPPOS; and obviously similar to the mark SHARP, "EPOS" and "POS" being recognised acronyms for the descriptive terms "electronic point of sale" and "point of sale".

I therefore find that the first limb of paragraph 2 of the Policy is satisfied.

Abusive Registration

Paragraph 1 of the Policy defines an "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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."*

Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The factors under paragraph 3a on which the Complainant seeks to rely are as follows:

- i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:
 - A. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*
 - B. as a blocking registration against a name or mark in which the Complainant has Rights; or*
 - C. for the purpose of unfairly disrupting the business of the Complainant;**
- ii. Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant*
- iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;"*

The key one of these factors is the one relating to confusion, in other words paragraph 3a.ii. In relation to this factor, the fundamental question is what message the Respondent's use of the Domain Names conveys to relevant members of the public. As well as the nature of the Domain Names themselves, which do nothing to make clear that they are unconnected with the Complainant, it is relevant that the website to which the Domain Names resolve is prominently headed "SHARP-EPoS" with the word SHARP in the same red colour and typeface as used by the Complainant, and only makes reference PanaEpos Ltd in small typeface and at the bottom of the page. In my opinion, many, if not most, people arriving at the website will be confused into believing that it is operated by the Complainant itself or, if not, by an authorised UK reseller of the Complainant. In fact the Respondent is not an authorised reseller of the Complainant.

This is therefore a case which falls squarely within paragraph 3a.ii of the Policy, in the same way as the *Seiko UK Limited v Designer Time/Wanderweb* case (DRS 00248).

Given the likelihood of such confusion being caused, the Respondent's use of the Domain Names takes unfair advantage of the Complainant's Rights by unfairly attracting customers to the Respondent's website in the mistaken belief that they are accessing a website of the Complainant or authorised by the Complainant.

The usage is also unfairly detrimental to the Complainant's Rights in light of the fact that the Respondent's website also sells products of third party competitors. This means that customers may purchase a non-SHARP product when they were originally intending to buy a SHARP product, thereby depriving the Complainant of a sale. If, by the time a customer purchases a non-SHARP product, he realises that it is not a SHARP product, he will still have been "baited" by the use of the SHARP name within the Domain Names and then "switched" to a competitor's product. If a customer buys a non-SHARP product believing it to be a SHARP product, or at least a product approved by Sharp, as well as depriving the Complainant of a sale, this will jeopardise the Complainant's control of its own business reputation. For example, if the non-SHARP product turns out to be faulty, that will clearly impact negatively on the Complainant.

The same point about jeopardising the Complainant's control of its own reputation also applies more generally. This is because, if (as I have found) people are likely to believe the Respondent's website is the Complainant's website or that of an authorised reseller, then any bad experience which a customer may have from using the website will cause harm to the Complainant's reputation. I should make clear that I am not suggesting that any customers have had, or will have, a bad experience when doing business with the Respondent through his website. The point is that it is something which is outside the Complainant's control and this in itself is unfairly detrimental to the Complainant's Rights.

In light of the above, I conclude that the Domain Name is an Abusive Registration. I therefore do not need to go on to consider the other grounds on which the Complainant relies. Nevertheless, for the sake of completeness, I will deal with them briefly:

3aiA: I do not believe that the Respondent registered the Domain Names with the primary purpose of selling them to the Complainant for a profit. At the time when he registered the Domain Names, the Respondent was an authorised reseller of the Complainant. Because of that, and the usage which he has subsequently made of the Domain Names to sell the Complainant's products, it seems to me that the Respondent's primary purpose was a purely business-related one.

3aiB and 3aiC: For the same reasons as mentioned above, in my opinion it would be wrong to conclude that the Respondent's primary purpose in registering the Domain Names was as blocking registrations or unfairly to disrupt the Complainant's business.

3aiii: In support of its reliance on this factor, the Complainant makes reference to the fact that it is also bringing UDRP proceedings against three other domain names owned by the Respondent, which consist of "sharp-epos" plus a generic domain suffix, all of which resolve to the same website as the Domain Names in this case. However, in my view this argument is circular and does not assist the Complainant. Either the Domain Names are Abusive Registrations or they are not - if they are, then the Complainant should also succeed in the UDRP proceedings against the other domain names; and vice versa. To rely on the existence of the other three domain names would be to pre-judge the outcome of this case.

7. Decision

Having found that the Complainant has rights in respect of names and marks which are identical or similar to the Domain Names and that the Domain Names in the hands of

the Respondent are Abusive Registrations, the Expert directs that the Domain Names, *sharp-epos.co.uk* and *sharppos.co.uk*, be transferred to the Complainant.

Signed Jason Rawkins

Dated: 16 February 2011