

Nominet UK Dispute Resolution Service

DRS 11679

ED Enterprises AG

and

Jonjoe Lewis

Decision of Independent Expert

1 Parties

Complainant: ED Enterprises AG

Address: Ludwig-Ganghofer-Str. 6
Grünwald

Postcode: D-82031

Country: Germany

Respondent: Jonjoe Lewis

Address: College Farm
Denham
Eye
Suffolk

Postcode: IP21 5DE

Country: United Kingdom

2 Domain Name

<blaupunkt-radio-codes.co.uk>

3 Procedural History

- 3.1 On 18 July 2012 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 19 July 2012. No response was received. The complainant requested referral of the matter for expert decision under the Procedure, and on 21 August 2012 paid the applicable fee.
- 3.2 I was appointed as expert on 28 August 2012. I have made the necessary declaration of impartiality and independence.

4 Factual background

- 4.1 The complainant sells car radios and other electronic and audio equipment internationally, under the well-known *Blaupunkt* brand.
- 4.2 The respondent registered the domain name on 13 October 2009.

5 Parties’ Contentions

Complainant

- 5.1 The complainant says it has traded since the 1920s, and first registered the BLAUPUNKT trade mark in the UK in 1961. It has produced documentary evidence from the UK Intellectual Property Office and from the Office for Harmonisation in the Internal Market of its UK and Community trade marks for the name BLAUPUNKT. It has also produced documentary evidence that it has registered the domain <blaupunkt.com>, and says that it has had a website at <blaupunkt.de> since 1995. It says it has built up a substantial reputation under the *Blaupunkt* name.
- 5.2 The complainant argues that the domain name is identical or similar to its name. It says its name has been reproduced in its entirety in the domain name, and that the addition of the words *radio* and *codes* serves only to suggest a connection to the complainant.
- 5.3 It says the respondent is using the domain name in a way which is likely to confuse internet users into thinking the domain name is connected to the complainant, because the services sold on the web using the domain name are closely related to the complainant’s goods.
- 5.4 The complainant has produced evidence in the form of a screenshot that the respondent has used the domain name to sell *Blaupunkt* radio codes. By doing so, it says the respondent is using the domain name in a way which takes unfair advantage of its rights.

- 5.5 It says that the respondent is in the habit of registering domains corresponding to its trade marks, and that the domain name was registered to unfairly disrupt its business.

Respondent

- 5.6 No response has been provided.

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 It is not disputed that the complainant trades under the brand *Blaupunkt*, that it has trade marks for that name and that it owns the domains <blaupunkt.com> and <blaupunkt.de>.
- 6.4 At the third level (i.e. disregarding “co.uk”), the first and dominant element of the domain name is the word “blaupunkt”.
- 6.5 In my view, the inclusion within the domain name of the additional words “radio” and “codes” does not make it dissimilar to the complainant’s name. On the contrary, the inclusion of those words strengthens the apparent connection with the complainant’s goods, and so if anything reinforces the domain name’s similarity to the complainant’s name.
- 6.6 In those circumstances I am satisfied that the complainant has rights in respect of a name which is similar to the domain name.

Abusive Registration

- 6.7 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.

- 6.8 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the respondent is using a 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.
- 6.9 Given that the domain name includes the complainant's name together with additional words which strengthen the likelihood of an inference that the domain name is connected to the complainant, and given that services offered using the domain name – *Blaupunkt* radio codes - relate to the complainant's goods, in my view confusion is likely between the domain name and the complainant.
- 6.10 In my view therefore, the respondent appears in the circumstances 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.
- 6.11 It is 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.
- 6.12 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 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.

Carl Gardner

31 August 2012