

DISPUTE RESOLUTION SERVICE

D00012509

Decision of Independent Expert

Reckitt Benckiser Plc

and

Mr Carl Wetton

1. The Parties:

Complainant: Reckitt Benckiser Plc
103-105 Bath Road
Slough
Berkshire
SL1 3UH
United Kingdom

Respondent: Mr Carl Wetton
145-157 St John Street
London
EC1V 4PW
United Kingdom

2. The Domain Name:

reckitbenckiser.co.uk

3. Procedural History:

On 25 February 2013 the dispute was received by Nominet and was validated on 26 February. On 26 February notification of the Complaint was sent to both parties. On 15 March a response reminder was sent but by 20 March Nominet noted that no response had been received and formal notification of no response was sent to both parties the same day.

On 20 March, after the deadline for a formal Response, the Respondent submitted a non-standard response noting that he was "happy to hand this domain over" to the Complainant. There was some further correspondence between Nominet and the Respondent and the Complainant. This correspondence concluded with the Complainant declining the offer of

transfer and indicating that it wished to proceed to a full decision. Consequently on 04 April the Expert decision payment was received and the Expert, Tim Brown, confirmed that he knew of no reason why he could not accept the invitation to act as an Expert in DRS 12509 and that he knew of no matters which ought to be drawn to the attention of the parties which might call into question his independence or impartiality. Nominet accordingly appointed him on 11 April.

In considering the Respondent's non-standard submission and offer to transfer the Domain Name, I have referred to paragraph 5.14 of the Experts' overview¹, which notes:

Occasionally, following the filing of the Complaint, but before the case papers have been passed to an Expert for decision, the Respondent informs the Complainant (and/or Nominet) that he is willing to transfer the domain name to the Complainant without charge. If the Complainant agrees to accept the domain name on that basis, there is a procedure whereby Nominet can process the transfer. If, however, the Complainant insists on a decision and pays the prescribed fee, the papers will be sent to an Expert for a decision.

Therefore, despite the apparent willingness of the Respondent to transfer the Domain Name, I am obliged to make a decision. I also note that it is still essential for me to be satisfied that the elements necessary to make a finding of Abusive Registration are present and that on balance the Complainant has shown it has Rights in respect of a name or mark which is identical or similar to the Domain Name and the Domain Name, in the hands of the Respondent, is an Abusive Registration per paragraph 2 of the Policy.

4. Factual Background

The Complainant is a public limited company registered in England and Wales and incorporated in 1953. It is a worldwide manufacturer and supplier of household, healthcare, personal care and pharmaceutical products. The Complainant was re-named in December 1999 following the merger of the UK company Reckitt & Colman plc and the Dutch group Benckiser N.V.

The Complainant is the owner of many well-known brands in the household cleaning, pharmaceutical and consumer healthcare markets. The Complainant supplies its products to 180 countries and has operations in over 60 countries in Europe, North and South America, Asia, Australasia, the Middle East and North and South Africa.

The Respondent is an individual based in the United Kingdom. According to the Complainant's submissions, which are not denied by the Respondent, the Respondent worked as a contractor for the Complainant between February 2012 and February 2013.

5. Parties' Contentions

Complainant

The Complainant's contentions are as follows:

Complainant's Rights

¹ The Experts' overview is a document put together by Nominet's panel of Experts which deals with a range of issues that come up in DRS disputes. It is published on Nominet's website at: http://www.nominet.org.uk/sites/default/files/drs_expert_overview.pdf

As noted in the Factual Background, the Complainant's predecessor has traded in the United Kingdom and elsewhere since at least 1953. The Complainant has been known as Reckitt Benckiser Plc since December 1999, as evidenced by the Complainant's Certificate of Incorporation on Change of Name which has been exhibited.

The Complainant is the registered proprietor of trade marks in a substantial number of jurisdictions which relate to the term RECKITT BENCKISER. Evidence of registration of a number of relevant marks has been exhibited, including extracts of the Complainant's European Community trade mark no. 001416056 (registered 07 February, 2003) and International Registration (UK) no. 735011 (registered 09 December, 1999).

The Complainant also claims extensive worldwide unregistered or common law rights in the term RECKITT BENCKISER as a result of its extensive use. Examples of such use include the Complainant's registration of a large number of domain names relating to the term RECKITT BENCKISER.

The Complainant additionally notes it spends millions of pounds every year on media advertising and says that many of its brands have a significant worldwide reputation. In 2011 the Complainant's net revenue was nearly £9.5 billion and the Complainant was the ninth largest advertiser in the UK, with a total advertising spend of £75 million.

The Complainant avers that the Domain Name is confusingly similar to its trade mark RECKITT BENCKISER and its corporate name, "Reckitt Benckiser plc". The Complainant notes the Domain Name is identical save for the indicator ".co.uk" in place of "Plc" and the absence of a second "t" at the end of "Reckit".

Abusive registration

The Complainant says that the Respondent's registration and use of the Domain has rendered it an Abusive Registration in terms of the Policy.

The Complainant says the Respondent is not currently using or commonly known under the name Reckitt Benckiser and therefore has no justification for registering a domain name which is nearly identical to the company name and trade mark RECKITT BENCKISER.

The Complainant notes that the Respondent worked as a contractor for the Complainant from February 2012 until 01 February 2013 and that the Domain Name was registered three days after the Respondent left the Complainant's employment, that is on 04 February 2013. The Complainant claims that therefore the Respondent must have been aware that registering a domain name incorporating a sign confusingly similar to the Complainant's trade marks and company name would have the effect of preventing the Complainant from registering the Domain Name.

The Complainant avers that the Domain Name has been configured to point to the Complainant's own homepage at <rb.com> and that there are two MX records associated with the Domain Name which point to active servers.² The Complainant contends that it is more likely than not that the Respondent's primary purpose for registering the Domain Name was to send and receive emails - either to pass himself off as working for or on behalf of the Complainant or to create confusion. The Complainant says the fact that the Domain Name points to the Complainant's home page supports the notion that the Respondent registered the Domain Name in order to receive email traffic intended for the Complainant.

² An MX or Mail eXchanger record is a type of resource record in the Domain Name System that specifies a mail server responsible for accepting email messages on behalf of a recipient's domain name.

The Complainant concludes that the circumstances of registration and subsequent use of the Domain Name indicate that the Respondent is using 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, which is not the case.

Respondent

As noted in the Factual Background above, the Respondent has not formally replied to the Complainant and in a non-standard submission has noted he is "happy to hand this domain over" to the Complainant.

6. Discussions and Findings

Rights

The Complainant claims registered and unregistered rights in the term RECKITT BENCKISER, has exhibited a list of a large number of related or identical trade marks and, as noted above, has exhibited extracts from the relevant trade mark bodies for its European Community and International Registration (UK) marks.

As is customary in DRS proceedings the .co.uk suffix is only required for technical reasons and, along with any whitespace, can be ignored for the purposes of comparison between a mark and a Domain Name. The Domain Name therefore only differs from the mark by the absence of a second "t" at the end of "Reckit".

In my view the Domain Name is extremely similar to the Complainant's registered rights and I assume that the Domain Name was intended by the Respondent to be a typographical variant of the Complainant's mark. I therefore find that in terms of the Policy the Complainant has Rights in respect of names or marks which are similar to the Domain Name.

Abusive Registration

Paragraph 1 of the Policy defines an Abusive Registration as a domain name which:

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;

The Policy lays out a non-exhaustive list of factors which may be viewed as evidence that a domain name may be an Abusive Registration. The Complainant's primary argument is that there are 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 in terms of paragraph 3.a.ii.

| The Complainant says that the use of the Domain Name to divert users [to](#) the Complainant's website while simultaneously configuring the Domain Name with active MX records which could allow for misdirected email to be received by the Respondent will have caused such confusion.

I have referred to Paragraph 3.3 of the Experts' Overview, which notes:

Paragraph 3(a)(ii) concerns confusing use of the domain name. What is meant by confusing use?

[...]

Another potential for confusion (frequently overlooked) is the use of a domain name for the purposes of email. There are many examples of registrants of domain names receiving email traffic intended for the Complainant. Whether evidence of this occurring will lead to a finding of Abusive Registration will, of course, depend to a large extent on the nature of the domain name and the circumstances of its use.

On balance I am inclined to agree with the Complainant's contentions. When using the Internet for web services, users on typing, or more likely mistyping, the Domain Name into their browser would expect to find the Complainant's website. As it is currently configured this is what happens. However, when using the Internet for email services users typing, or again mistyping, the Domain Name would reasonably expect their email to arrive at the Complainant or to be bounced back to them. As currently configured this would not happen. Any mistyped email would arrive at the Respondent's mail server.

In my view, this is enough to show that on balance the Domain Name is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant in terms of paragraph 3.a.ii of the Policy.

That the Respondent has chosen not to rebut the Complainant's contentions or, indeed, formally take part in these proceedings perhaps shows that it is unlikely that he has a convincing argument that the Domain Name is not Abusive in terms of the Policy.

On the evidence and submissions before me it is my view that on the balance of probabilities the Domain Name, in the hands of the Respondent, is an Abusive registration.

7. Decision

Having concluded that the Complainant has Rights in respect of names or marks which are similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration, I determine that the Domain Name should be transferred to the Complainant.

Signed Tim Brown

Dated 24 April 2013