

Dispute Resolution Service

DRS13082

Decision of Independent Expert

StageLamps Limited

and

Gareth Hedge

1. Parties

Complainant: StageLamps Limited
51 Merryvale Avenue
Glasgow
G46 6DD
United Kingdom

Respondent: Gareth Hedge
15 Linden Street
Burnley
Lancashire
BB10 4EQ
United Kingdom

2. Domain Name

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

3. Procedural Background

On 16th July 2013 the Complaint was lodged with Nominet UK Limited (“Nominet”), and on 17th July 2013 it was validated. On 17th April 2013 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint and giving him 15 working days within which to lodge a Response on or before 7th August 2013.

The Respondent responded on 26th July 2013. On 31st July 2013 Nominet informed the Complainant that the Response was available to be viewed via the Complainant’s online services account and inviting it to Reply to the Response on or before 7th August 2013. The Complainant replied to the response on 31st July 2013. On 31st July 2013 Nominet informed the Respondent that the Reply was available to be viewed via the Respondent’s online services account. Mediation documents were generated for the Complaint and mediation commenced on 5th August 2013. Mediation was unsuccessful and concluded on 15th August 2013.

On 20th August 2013 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 20th August 2013 Mr. Niall Lawless (“the Expert”) was selected and on 30th August 2013 was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in-to question his impartiality and -/- or independence. He is required to give his Decision by 20th September 2013.

4. Outstanding Formal -/- Procedural Issues

On 28th August 2013 and 10th September 2013 the Complainant made non-standard submissions under Section 13 B of Nominet’s DRS Procedure. The following explanatory paragraphs explained the reasons for the submissions :-

28th August 2013

“Domain Name - stagelampsuk.co.uk

Dear Sir/Madam,

Further to our earlier conversation with your Richard Plater I ask that the attached documents be included supplementary to the existing case file when passed for Expert Decision and that the appointed Expert be allowed to consider them in his decision.

I believe the attached shows further evidence that we have rights in a name identical to the domain and that the respondent has used this name as an abusive registration. Furthermore I believe it shows that the respondent was clearly aware of StageLamps Limited, and StageLamps UK at the time of registration and therefore that the registration was designed to take unfair advantage of our name and goodwill and for the purpose of disrupting the lawful business of StageLamps Limited as per sections 3(C)(ii) of the DRS Policy and Procedure.

Best Regards,

Ross McKillop

StageLamps Limited"

10th September 2013

"Domain Name - stagelampsuk.co.uk

As this is now at expert decision stage I'm not sure if this is of any use to you or if it would be passed to the expert for consideration but today we received another two complaints (by e-mail and telephone call) from people dealing with stagelampsuk.co.uk that then had cause to complain contacting ourselves.

They both seemed surprised when we explained, and the recorded telephone calls would confirm without any doubt that the respondent is attempting to leverage the goodwill in our own name, as well as causing confusion with members of the public.

If this is useful I can forward the e-mails and recordings however otherwise we'll just await the expert decision.

Regards,

Ross McKillop

StageLamps Limited"

The Expert did not consider the non-standard submissions would assist him in making his Decision.

5. Factual background

The Complainant StageLamps Limited is a private limited company registered in Edinburgh, company number SC396673. StageLamps Limited was incorporated on 30th March 2011, and the nature of its business is retail sale via mail order houses or via the internet.

The Domain Name was registered on 29th March 2013 by Gareth Hedge a UK Sole Trader, trading as LED Castle. The Respondent is using the Domain Name to host an on-line store offering professional light bulbs and professional LED Lighting for sale over the internet.

The Complainant seeks transfer of the Domain Name to it.

6. The Parties' contentions

The Complainant

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Nominet's Dispute Resolution Service Policy (the "Policy"):-

- Paragraph 3 (a)(i)(C), because the Respondent registered the Domain Name for the purpose of unfairly disrupting the Complainants' business.
- Paragraph 3 (a)(ii), because it has been and is being used 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.

The Respondent

The Respondent says that he set up "Stage Lamps UK" as a sole trader business, and that the Complainant has no right to demand transfer of the Domain Name unless it has trade-marked the name "Stage Lamps".

The Respondent says that it registered a number of domain names to have them available pending his decision as to which name to use for his business.

The Respondent says that the Complainant's accusations that he has upset the Complainant's customers are slander. The Respondent says he values the importance of customer service and he rarely has customer complaints.

7. Discussions and Findings

7.1 General

Nominet's Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant 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.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainants' Rights; or
- ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainants' Rights.

The Complainant is required to prove to the Expert that the Complainant has Rights and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

7.2 Complainants' Rights

"StageLamps" is the Complainant's company name. The Complainant has been trading under the name StageLamps ("StageLamps" or "Stage Lamps") since 2009.

The Complainant owns and operates its on-line business using the domain name "www.stagelamps.co.uk". The "www.stagelamps.co.uk" domain name was registered on 30th November 2009, and the website hosted at "www.stagelamps.co.uk" offer a wide range of products and is professionally designed.

Because of this, I decide that the Complainant has Rights in respect of a name or mark, which is identical or similar to the Domain Name.

7.3 Abusive Registration

Registration of the Domain name

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy Paragraph 2 (a)(ii), because it has been registered and used in a manner which has taken unfair advantage of, or has been unfairly detrimental to, the Complainants' Rights. The Complainant says that the Respondent has registered the Domain Name with the intent of disrupting its lawful business.

The Respondent has not responded to the above and offered no evidence.

The Complainant also says that the Respondent has another website registered to a dissolved company hosted at "www.prolightingaccessories.co.uk" and this website is identical to the website hosted at the Domain Name.

The Complainant conducts its online business using "www.stagelamps.co.uk". The homepage of its website says:-

"Established in 2010 to provide one-stop shop for lamps and consumables for the entertainment industry at reasonable prices StageLamps provides lamps for your theatre and studio lighting - generics and moving heads. We also provide "domestic" lamps for the rest of your venue.

We also supply a wide range of LED Lighting Fixtures which are more flexible and more economical than ever before. stagelamps.co.uk is managed by a team of theatre technicians who use our products themselves and understand the pressures and nature of the entertainment industry.

Not entirely sure what lamp you need? Give our team a call".

The homepage of the website being hosted at the Domain Name says:-

"Welcome to Stage Lamps UK. When it comes to professional light bulbs and professional LED Lighting, you simply won't find a better online store than Stage Lamps UK. We have an extensive selection of the latest stage lighting equipment, as well as a huge stock of Stage / Theater light bulbs for thousands of different lighting fixtures across the professional lighting industry. As we hold stock for all of our lamps and LED products we can offer a next day delivery service unlike many other companies. We are always striving to give our customers the best prices available and so will compete with any other quotation you may have had already".

A comparison of the two homepages shows that the Complainant and the Respondent are competing in the same market, offering similar products at competitive prices.

People use keywords (or search terms) to locate websites that might have the goods and services they seek. When I used Google to search the internet using the keywords “Stage Lamps”, the website hosted at the Domain Name is returned as an advertisement at the top of the Google search list. The position at the top of Google list of advertisements related to “Stage Lamps”, indicates that the Respondent is using Google Adwords (keywords related to his business) to ensure the website hosted at the Domain Name gets priority in searches.

As the website hosted at the Domain Name is returned at the top of the search list, people are more likely to visit it, to buy products from it, and because of that, the Respondent is disrupting the Complainant’s business.

There is nothing wrong with that in the course of genuine competition, I have to decide if the disruption is unfair.

Given that the supply of stage lamps and associated products is a niche market in the UK, I decide that on the balance of probabilities the Respondent knew about the Complainant and its business when he registered the Domain Name. Although he has offered no evidence on this, it would not be credible to say that the Respondent did not know about the Complainant and was not aware of the Complainant’s website hosted at “www.stagelamps.co.uk”. Therefore, I decide that the Respondent took advantage of the Complainants’ brand and registered the Domain Name for the purpose of unfairly disrupting the Complainants’ business.

However, even if I am wrong about that, the Nominet Experts Overview says that *“unfair disruption of the Complainant’s business by way of a domain name is very likely to constitute an abusive use of the domain name (DRS 02223 itunes.co.uk)”*.

It is enough for the Complainant to show that the 'abuse' occurred at any time during the 'life' of the domain name - so it may be that :-

- there was an 'unfair' motive when it was registered;

- there was an 'unfair' use after registration but it has now stopped;
- there was an 'unfair' motive at transfer;
- there is something 'unfair' going on now;
- the domain name is inherently 'unfair' (similar to the concept of an "instrument of fraud" in the Court of Appeal case One In a Million);
- any combination of these.

Nominet's Policy states that Abusive Registration means 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;

It is clear that the Respondent is currently using the Domain Name to offer similar products to the products the Complainant offers. This is unfair and I decide that the Domain Name is being used in a way which is unfairly detrimental to the Complainant's Rights. I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

Confusion

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under Paragraph 3 (a)(ii), because it has been and is being used 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.

The Complainant says that it has received phone calls from businesses and individuals who believed that they were dealing with it. The businesses and individuals believed that the website being hosted at the Domain Name was a second website controlled by the Complainant, and some threatened legal action because goods they had paid for were not delivered.

The Responding Party says that the Complainant's accusations that he has upset the Complainant's customers are slander.

Defamation is where a false statement, which harms the reputation of an individual or business, is made to someone other than the person defamed. Slander is defaming someone using words and libel is defaming someone using writing. Slander is a civil wrong (tort) and can be the basis for a lawsuit, but this is a matter to be decided by the courts and not a Nominet Expert.

It is common for Internet users to find or visit websites by way of a search engine or by guessing the relevant URL. As the Domain Name incorporates the Complainant's company name, its trading name "Stage Lamps" and the dominant part of the Complainant's established website address, internet users are likely to believe that any webpage it resolves to is "operated or authorised by, or otherwise connected with the Complainant."

This is known as "initial interest confusion" and is evidence of Abusive Registration, the vice being that even if it is immediately apparent to the internet user that the webpage is not in any way connected with the Complainant, the visitor has been deceived.

Because "initial interest confusion" arises from the way that the Respondent is using the Domain Name, I decide that in the control of the Respondent the Domain Name is an Abusive Registration.

7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

Niall Lawless, Nominet Expert

20th September 2013