

DISPUTE RESOLUTION SERVICE

D00013119

**Decision of Independent Expert
(Summary Decision)**

Surrey Chauffeur UK Ltd

and

Mr Michael Hunter

1. The Parties:

Complainant: Surrey Chauffeur UK Ltd
P.O Box 457
West Byfleet
Surrey
KT14 9BG
United Kingdom

Respondent: Mr Michael Hunter
11 Vicarage Road
Woking
Surrey
GU22 9BP
United Kingdom

2. The Domain Name(s):

surreychauffeurcars.co.uk
surreychauffeurs.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the respondent in accordance with paragraphs 2 and 4 of the Procedure. Yes No

4. Rights

The complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain name. Yes No

5. Abusive Registration

The complainant has, to my reasonable satisfaction, shown that the domain names surreychauffeurcars.co.uk and surreychauffeurs.co.uk is an Abusive Registration Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances Yes No

7. Comments (optional)

The complainant's complaint as originally filed related to four different domain names registered to three different unconnected registrants. Nominet pointed this out to the complainant and confirmed that its complaint would have to be split into three separate complaints. At the same time, Nominet pointed out to the complainant that it had provided no evidence to support its claim to Rights in the name SURREY CHAUFFEURS, and suggested that the complainant may wish to provide supporting evidence for both the 'Rights' test and the 'Abuse' test.

The complainant responded by providing an exchange of emails with the respondent in which the complainant said the respondent "*admits that he was aware of our company for sometime and also admits he purchased the domain for the sole purpose of expecting me to contact him. He also admits that a particular account was obtained via the customer incorrectly assuming he was Surrey Chauffeur.*"

The complainant went on to say that the email exchange was "*all the evidence you require to establish not only the "Rights" but also the "Abuse" test*".

I do not agree.

'Rights' for the purposes of the Nominet DRS means "*rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*". The name SURREY CHAUFFEURS is on its face entirely descriptive of any chauffeur business based or operating in any part of the county of Surrey. There is therefore an onus on the complainant to demonstrate with evidence that it has, in fact, acquired a secondary meaning distinctive of the complainant as a result of its use by the complainant.

No such evidence has been provided by the complainant despite being given an additional opportunity to do so after the original complaint was filed.

The fact that the complaint originally related to four different domain names, each one incorporating 'Surrey Chauffeur' or 'Surrey Chauffeurs', owned by three different registrants may be an indication of the generic nature of the name. In the complaint itself, the complainant even says that it is "*generically known as Surrey Chauffeurs*" and that "*many of the domain names we already own reflect this generic reference*". Surrey covers a very large area and there must be a large number of chauffeur businesses operating in that area. For example, a search I undertook on www.yell.com for 'chauffeurs' in 'surrey' brings up 228 results. It is very difficult for an entirely generic name such as SURREY CHAUFFEURS to acquire a secondary meaning distinctive of one particular chauffeur business based or operating in Surrey. Substantial evidence of prolonged use and reputation would be needed to have any chance of doing so. None has been provided.

In addition, the email exchange with the respondent provided by the complainant does not, as claimed, contain any admission by the respondent that "*he purchased the domain for the sole purpose of expecting [the complainant] to contact him*". The exchange in 2012 was initiated by the complainant making an enquiry about buying one of the Domain Names and that led to a discussion about price and the revenue being generated by the respondent from using the Domain Names, along with many other domain names, to resolve to websites that then directed the Internet user to his business known as 'Overland Executive Cars'.

In the email exchange, the respondent does acknowledge that "*some of them may be people looking for [the complainant] or other firms with a similar name*". He also confirms that he had been aware of the

complainant's existence as he says that several years ago "a car for a Mr McLaughlin was booked on our website via www.surreychauffeurs.co.uk <<http://www.surreychauffeurs.co.uk/>> diversion and that led to a good corporate account. They had meant to book it with you I think and ended up double booking it (30/03/09) but once the mix up was ironed out, they started using us anyway for all their airport transfers and other regular destinations Ottershaw/Sunbury/Reading/Leatherhead etc. I can assure you that we at no point "pretended" to be your company which is obvious from the website they were diverted to in the first place as it is called Overland."

This statement was made by the respondent when explaining his comment that "Were we in the market of buying and selling domains then we would have come to you as we knew you existed". The respondent was making the point that he had not in fact approached the complainant to sell the Domain Names as he was not in the business of trading in domain names.

The fact that the respondent became aware of the complainant's business trading under the name of Surrey Chauffeurs UK Limited as a result of an instance of 'initial interest confusion' and then subsequently continued to use the Domain Names to drive internet traffic to his competing business trading as Overland Executive Cars in the knowledge that some of those customers "may be people looking for [the complainant] or other firms with a similar name" might have been evidence of an Abusive Registration had the complainant demonstrated that it had Rights in the name SURREY CHAUFFEURS. However, in the absence of Rights acquired as a result of such a descriptive name having acquired a secondary meaning distinctive of the complainant through prolonged, substantial use, any instances of customer confusion is the price to be paid by the complainant for having adopted a generic / descriptive trading name, and the continued registration and use of the Domain Names by the respondent cannot amount to an Abusive Registration.

8. Decision

Transfer	<input type="checkbox"/>	No action	<input checked="" type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

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Signed:

Chris Tulley

Dated: 11 September 2013