

DISPUTE RESOLUTION SERVICE

D00013281

Decision of Independent Expert

Novartis AG

and

C Blatchley T/A The Discount Lens Co.

1. The Parties:

Lead Complainant: Novartis AG
Basel,
Switzerland, 4002

Respondent: C Blatchley T/A The Discount Lens Co.
Glass House
2-4 Bulls Head Passage
London EC3V 1LU
United Kingdom

2. The Domain Name: dailies.co.uk

3. Procedural History:

09 September 2013 15:10 Dispute received
10 September 2013 12:44 Complaint validated
10 September 2013 13:36 Notification of complaint sent to parties
26 September 2013 11:11 Response received
26 September 2013 11:13 Notification of response sent to parties
01 October 2013 02:30 Reply reminder sent
02 October 2013 10:04 Reply received
02 October 2013 10:08 Notification of reply sent to parties
02 October 2013 10:09 Mediator appointed
07 October 2013 09:55 Mediation started
21 October 2013 13:40 Mediation failed
21 October 2013 13:40 Close of mediation documents sent
28 October 2013 10:48 Expert decision payment received

Expert Declaration

I confirm that I am independent of each of the parties. To the best of my knowledge and belief there are no facts or circumstances, past or present or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

4. Procedural Matters

On 29 October 2013 the Respondent requested permission to make a further submission, subsequent to the Complainant's Reply to his initial Response. Paragraph 13b of the DRS Procedure permits such submissions under certain circumstances and allows DRS Experts discretion as to whether they will consider them. On this occasion I have considered the Respondent's submission and a summary of it is included with the other submissions of the Parties below.

5. Factual Background

The Complainant is Novartis AG, a multinational pharmaceutical company based in Switzerland, operating in over 140 countries around the world. It was formed in 1996 from a merger of Ciba-Geigy Limited and Sandoz Limited.

The Respondent is an individual, trading as The Discount lens Co. The Domain Name was registered on 30 November 1999 and does not resolve to a website as of the date of this Decision.

6. Parties' Contentions

My summary of the Parties' submissions is set out below.

The Complaint

Complainant's Rights

The Complainant states that its business is the development, manufacture and distribution of medicines and products for the treatment of medical conditions. It claims to be ranked number two in sales in the world pharmaceutical industry and No.160 in the Global 500 rankings of the largest corporations in 2010.

The Complainant describes its eye care division as one of the largest manufacturers of contact lenses and lens care products. These include the brand DAILIES, a daily disposable contact lens. The Complainant asserts that it is the first company to commercialize silicone hydrogel contact lenses and the first to develop daily disposable contact lenses.

The Complainant has provided evidence that that it owns *inter alia* the DAILIES mark, used in connection with contact lens products and related services and that substantial resources have been devoted to the establishment and protection of its trademarks and service marks. As part of its trademark portfolio, the Complainant has registered the "DAILIES" and "FOCUS DAILIES" marks (Reg. No. 2,167,845 registered June 23, 1998) with the US Patent and Trademark Office and the UK Intellectual Property Office (Reg. No. E1768118 Filing date July 21, 2000), (Reg. No.

EU001974815). The Complainant submits that its DAILIES marks form a clear part of its substantial online material and product packaging, through its website at www.dailies.com. The Complainant states that it has engaged in enforcement of its trademarks in numerous dispute resolution procedures where, in each case, it was found to have established rights in the mark “DAILIES”.

Abusive Registration

The Complainant claims that the Domain Name in the hands of the Respondent is an Abusive Registration, arguing that the strength of its rights and the Respondent’s background suggest that the Respondent had knowledge of the DAILIES mark at the time he registered the Domain Name. The Complainant points to the fact that in 1996, three years before the registration of the Domain Name, it was the product of a corporate merger, creating the world’s second largest drugs group, resulting in extensive media publicity. In 1997, the Complainant launched the FOCUS DAILIES contact lens which was praised as one of the “most significant developments in soft manufacturing in the 1990’s”. The Complainant submits that the term DAILIES has become widely associated with the Complainant’s brand of contact lenses.

The Complainant argues that the Respondent as an eye and aesthetic medicine specialist operates within the same industry as the Complainant. In the Complainant’s view, the registration of the Domain Name two years prior to its product launch and a year prior to its trademark registration suggests, on the balance of probabilities, that the Respondent had knowledge of the Complainant’s brand.

The Complainant believes that the nature of the links on the parking page to which the Domain Name resolves is abusive, directing to sites selling discounted disposable and coloured contact lenses. The Complainant cannot vouch for the authenticity of the products sold on these sites and argues that it must associate itself with a legitimate supply chain as the problem of counterfeit lenses has the potential to tarnish its reputation and disrupt its business. The Complainant claims that the Respondent’s behaviour goes beyond potential damage to the Complainant, being likely to confuse consumers into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

Although it may be immediately apparent to the visitor that the site is not its official site, the Complainant believes that the lure of discounted lenses may attract some to the alternative websites on the parking page, to the detriment of the Complainant and even the deceived consumer. The Complainant argues that it is fair to assume that the Respondent’s reason for registering the Domain Name was the notoriety of the Complainant’s DAILIES brand. By registering an identical domain name to the Complainant’s mark he would take advantage of the goodwill associated with it.

The Complainant further argues that the registration is a blocking registration as the Respondent has interfered with the Complainant’s exclusive right to control use of its trademarks and as such prevented Complainant from using the .co.uk domain extension.

The Complainant maintains that the Respondent cannot rely upon any of the arguments provided under Paragraph 4 of the DRS Policy, to show that the

registration was not Abusive. The Respondent had knowledge of the Complainant and its brand and it is not possible to conceive of any plausible use of the Domain Name that would not conflict with the Complainant's rights.

The Complainant points out that there is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a genuine offering of goods or services since its registration and that, by directing users searching for the Complainant's brand to other websites which compete with Complainant, the Respondent presumably receives the benefit of click through revenue.

The Respondent is not "commonly known" by the Domain Name and is not authorised or licensed to use the Complainant's trademark in the Domain Name. There is no relationship that would give rise to such permission.

The Response

The Respondent is the owner of the Domain Name which he registered in 1999. The Respondent states that he owns many domain names which he has not used, but which he plans to use in a way that does not conflict with the rights of the Complainant or any other party.

The Respondent maintains that the Complainant has on at least two occasions attempted to get him to relinquish the Domain Name and states that the last attempt was several years ago. The Respondent says that he challenged the Complainant's right to the Domain Name at that time and heard no more from them. The Respondent claims that in his reply he said that he was happy to consider selling the Domain Name to the Complainant but received no reply to this offer. The Respondent states that the Complainant has made no attempt to contact him recently and that the Complaint makes no reference to this previous correspondence. The Respondent sets out in the Response the points that he made in the course of this correspondence.

The Respondent points out that he has held the Domain Name for many years since it was registered on 30th Nov 1999.

The Respondent accepts that the Complainant registered DAILIES as a trademark in relation to contact lenses etc in line with their filing date for registration in the UK on 21 June 2000, although the actual registration date is 2002

The Respondent registered the Domain Name 7 months before the application for UK trademark registration (and approx 3 years prior to the final date of registration).

The Respondent argues that the Complainant does not have a blanket right to use 'dailies', claiming that it is a generic term not specific to the optical industry. The Respondent offers an example of a registration of the mark DAILIES in different classes (undertaken by "Euronext") and a use of the word in a different business

context, that of the film industry. In this case “dailies” refers to the daily rushes viewed by directors.

The Respondent argues that “Dailies” has a general element of common usage similar, in the Respondent’s submission, to the relationship between Hoover and hoovering the carpet. The Respondent accepts that if he were to manufacture and market contact lenses under the name “Dailies” or “Blatchley Dailies” then he would be infringing the Complainant’s trademark. The Respondent has not registered for example “Focusdailies.co.uk” where the association between the domain name and the Complainant would be clearer.

The Respondent addresses the Complainant’s claim that pay-per-click advertising appears on the Domain Name site, stating that this was the case earlier, but that it was not organised with the Respondent’s permission or to its profit. The Respondent claims that the Domain Name is parked with NamesCo (www.names.co.uk) and the advertising was organised by them without the Respondent’s permission, with any income going to NamesCo. The Respondent does not accept the Complainant’s wide-ranging claims as to its rights, but declares that it has nevertheless ordered NamesCo to stop using the Domain Name to advertise for their profit and this has been done. The Respondent also points out that, since the links (now removed) are to sites that sell Focus Dailies he finds it hard to see how the Complainant can argue that they have been damaged by such advertising.

The Respondent asserts that the Complainant’s argument that there could be any “initial interest confusion” is without foundation. The Respondent argues that, while the Complainant implies that there could be confusion between its website <www.dailies.com> and the Domain Name site containing search engine generated links, no claims relating to the Complainant were made on this page, with only the NamesCo logo being shown.

The Respondent states that he cannot see how ownership of the Domain Name is relevant to the Complainant’s arguments about the possible offering of counterfeit goods on the site.

The Respondent points out that the Complainant’s claim that there is no relationship between the Parties is not correct as the Respondent buys Focus Dailies to sell through his site. However the Domain Name is not used to promote the Complainant’s product to the Respondent’s customers.

Complainant’s Reply to the Response

The Complainant states that it is unable to confirm the Respondent’s claim that there has been previous correspondences between them; from the Complainant’s recollection there has been none, but without evidence or documentation the Complainant does not feel it appropriate to respond on this point.

The Complainant points out that the Respondent does not contest the validity of the Complainant’s rights in the term DAILIES but raises the point that he registered the Domain Name some seven months before the Complainant’s application for a UK

trademark registration. The Complainant understands that the Policy has a low threshold test for rights, defining them as “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 Policy makes no reference to the date in which these rights were acquired. However, to address the Respondent’s concern expressed in the Response, the Complainant points out that in 1997, two years before the registration of the Domain Name, the Complainant launched its first disposable contact lenses under the name FOCUS DAILIES. The Complainant filed its US Trademark for the term DAILIES in 1994, five years before the registration of the Domain Name. It was registered in 1998, one year before the registration of the Domain Name. Therefore the Complainant’s rights and use of the term DAILIES predate the registration of the Domain Name. The Complainant believes that it is more likely that due to the Respondent’s experience and knowledge the Complainant’s product was the motivation for this registration.

The Complainant notes the Respondent’s argument that the term “dailies” is generic; but sees no reference to the term in the English dictionary. The Complainant contends that the more appropriate phrase that would best describe the Respondent’s reasoning would be the word “daily” (defined as: “done, produced, or occurring every day or every weekend”) not “dailies”.

The Complainant asserts that it does not claim a monopoly over the word “dailies” and is aware of its use in other industries. The Complainant argues that this dispute does not concern those other industries, just the “optical sphere” in which both the Complainant and the Respondent conduct their business.

The Complainant notes the Respondent’s admission that he accepts that if he were to manufacture and market contact lenses under the name Dailies or Blatchley Dailies then he would infringe the Complainant’s trademark. The Complainant argues that trademark infringement applies equally to the Internet, where the Domain Name, which repeats the Complainant’s trademark, resolves to a PPC parking page displaying links which compete with the Complainant’s goods. The Complainant further argues that the Respondent’s use of the Domain Name does not rely upon the “colloquial meaning” of the term “daily” or “dailies”. In the Complainant’s view, it is being used in the same manner as the Respondent’s <www.eyecareuk.co.uk> site which displays third party advertising links to associated goods and services.

The Complainant says that the Respondent has offered no explanation as to why he registered the Domain Name and no information about his intentions as Paragraph 4 of the policy permits him to do. In the Complainant’s view, the Respondent is responsible for the use of the Domain Name, notwithstanding the fact that the advertising links displayed at the Domain Name were not organised with its “specific permission”. The Complainant further asks why, if the Respondent was made aware of a dispute “several years ago” as he alleges, he did not take immediate steps to prevent the parking page from generating sponsored links relating to competing businesses at that time.

The Complainant notes that the Respondent indicated a willingness “to consider selling [the Complainant] the domain” in the course of correspondence which he says took place between the Parties. The Complainant finds it hard to believe that the

Respondent would have an initial intention of using the Domain Name in connection with a genuine offering of goods or services and then attempt to sell it to the Complainant simply upon request. The Complainant argues that the Respondent's use of the Domain Name as a PPC site for a period of 13 years and his alleged attempt to sell the Domain Name to the Complainant is evidence of an intention to profit financially from its abusive registration.

Lastly, the Complainant underlines that the relationship between the Parties described by the Respondent is not contractual. In the Complainant's submission, the Respondent merely describes the relationship between a merchant and a consumer which would not bestow upon him any license or permission to incorporate Complainant's mark in a domain name.

Further submission by the Respondent admitted under Paragraph 13 b of the DRS Policy

The Respondent argues that when he registered the Domain Name in 1999 there was no suggestion that the word "dailies" on its own was a registrable trademark. In the Respondent's view it is a general expression covering many uses, including daily contact lenses, as in "I'm wearing dailies, are you? They are so much better and more trouble free than monthlies". The Respondent alleges that the Complainant is trying to appropriate a general descriptive term which was used in common parlance prior to the date of registration of the Domain Name.

The Respondent states that he was one of the first opticians in the UK to market the Complainant's branded lenses "Focus Dailies" and acknowledges that these two words together formed an effective trademark. The Respondent further points out that the Complainant has never packaged its contact lenses in the UK under the name 'Dailies' alone, but have instead used "Dailies" in phrases such as 'Focus Dailies' or 'Dailies Aquacomfort Plus'.

The Respondent accepts that he might infringe the trademark "Dailies" if he were to manufacture contact lenses and use the word "Dailies" in the title. However this does not prohibit the use of the word 'dailies' in common parlance, either when generally used about daily contact lenses or in its other non-contact lens meanings, especially since these uses predate the Domain Name registration.

The Respondent alludes to legal advice it has received to the effect that there are grounds to challenge the registration of "Dailies" as opposed to "Focus Dailies" as a trademark and that the registration got 'under the radar' at the time.

The Respondent states that the Domain Name was registered in 1999 entirely in relation to its use in general parlance (including but not limited to the use of the word by contact lens wearers) and prior to any application by the Complainant to register "Dailies" as a trademark, either alone or in the phrase "Focus Dailies" in relation to contact lenses. The Respondent acknowledges that it would be bound by a specific court ruling defining the scope and limitations of the general and the trademarked

used of the word ‘Dailies’, along with any riders that were required to acknowledge Novartis’ rights.

The Respondent points out that the Complainant has produced no evidence that anybody has clicked through on the advertisement links on the holding page for the Domain Name. The Respondent argues that this was clearly a holding page without any indication that it was in any way related to the Complainant, whose claim of harm from the advertisements, not authorised by the Respondent and now removed, is an attempt to add substance to an invalid complaint.

7. Discussions and Findings

Before discussing the submissions of the Parties, I must make clear that matters relating to the validity or infringement of trademarks go beyond the scope of the DRS Procedure and insofar as they form part of the Parties’ submissions, I offer no comment upon them. As will be shown below, the DRS Procedure aims to provide a timely and inexpensive means of answering two questions: does the Complainant have Rights in a name sufficient to bring the Complaint and is the Registration of the Domain Name Abusive, as defined and elaborated upon in the DRS Policy and in the additional guidance provided by Nominet to assist the Parties.

A second preliminary matter arises from the Respondent’s submission that over a period of several years the Complainant approached him “on at least two occasions” to seek a transfer of the Domain Name. The Respondent received no reply to its negative answer and the Complainant took no further action in respect of the Domain Name until the present Complaint was initiated. The Complainant cannot say, one way or the other, whether there had been any correspondence on this matter between the Parties. Earlier DRS decisions considered the question of delay and certain principles have emerged: I must consider if the delay has had any separate prejudicial effect upon either Party’s case, over and above the intrinsic merits or faults in their arguments. I also have to consider whether a decision to ignore the delay or not will bring about a result which is, in all the circumstances, unfair or unconscionable.

On the one hand, the DRS Policy does not oblige complainants to act upon a cause for complaint within a specific time. On the other, a respondent might argue that a long period of silence supports the view that it is entitled to infer the Complainant’s acquiescence or disinclination to challenge a registration. This argument seems reasonable, but in this Complaint, delay does not materially affect the Respondent’s ability to make its case. I am not persuaded that the span of time between registration of the Domain Name and the bringing of this Complaint alters the position sufficiently to override the general principle that delay is not an obstacle to bringing a Complaint.

Findings

For the Complainant to succeed, it must satisfy the two stage test in paragraph 2 of the

Policy: the Complainant must prove 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.*

Complainant's Rights

The Complainant has submitted evidence of United States and UK trademark registrations in respect of the word DAILIES and examples of promotional material incorporating this name in its branded products. The test for Rights under the DRS Policy is not intended to be onerous, defining these as

“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 Respondent alleges that DAILIES is a generic term which arises in, but is not specific to, the optical industry. The Respondent refers to what might be called its conversational use to describe daily contact lenses and to its use in another context, that of the film industry. So far as its suggested use among contact lens wearers is concerned, evidence submitted by the Complainant in the form of promotional and marketing materials leads me to conclude on the balance of probabilities that the term has acquired a secondary meaning associating it with the Complainant. I do not accept that the descriptive component in the word “dailies” invalidates the Complainant’s registered Rights. The Respondent does not challenge the Complainant’s claim that it was the first to launch daily contact lenses in 1997 or that the Respondent, as an eye care professional, would have been aware of this development. The Complainant has provided evidence of a US trademark registration of DAILIES dated 23 June 1998 in the relevant classes, to refer to “daily disposable contact lenses”. This registration was some 17 months prior to the registration of the Domain Name in November 1999.

As to its use in other contexts, the example from the film industry is not especially persuasive. The more common expression, so far as I am aware, for a particular day’s filmed footage, is “rushes” which might be said to incorporate the notion of “daily”. For more precision, the expression “daily rushes” might occasionally be used, but I do not accept that “dailies” is sufficiently commonplace in this or in other contexts to support the Respondent’s position that the word on its own cannot be the subject of enforceable rights under the DRS Policy. I therefore conclude that the name in which the Complainant has such Rights is identical or similar to the Domain Name.

Abusive Registration

Paragraph 1 of the DRS Policy defines 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 DRS Policy sets out a non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration, including

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 the Domain Name in a way which has confused people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

Paragraph 3i above deals with the Respondent's actions and motives when the Domain Name was registered. the Respondent relies upon the fact that he registered the Domain Name seven months before the filing date of the Complainant's UK trademark, but (apart from stating his belief that "dailies" was a word in common use) does not explain why he selected it. The Complainant points out that its US trademark has a filing date three years before the registration and that its product, incorporating the word "dailies" in its name, was launched two years before registration. The Complainant argues that its market prominence and the reception given to the launch of its daily contact lenses point to the strong likelihood that the Respondent would have been aware of the Complainant and its products at the time of registration of the Domain Name. I accept this proposition.

The Complainant alleges that the Domain Name was registered with an intention to offer it for sale to the Complainant or to a third party at a profit. However, the only support offered for this is a reference to an offer to sell the Domain Name by the Respondent, in correspondence of which the Complainant otherwise claims to be unaware. Neither Party provides information as to whether the Respondent's offer to sell the Domain Name to the Complainant was for a price exceeding the Respondent's

out of pocket expenses or for some higher amount. Under these circumstances I am not prepared to draw any conclusions on this point.

Paragraph 3ii above addresses the issue of actual or potential confusion on the part of those who might see the Domain Name or visit the site to which it resolves. I see no evidence in the Complaint that confusion has actually arisen, nor any indication that the Respondent has tried to pass itself off as the Complainant or suggest a link to the Complainant of the kind described in this paragraph. The DRS Expert Overview explains confusion as follows:

“The ‘confusion’ referred to in this paragraph of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an Internet user seeing the domain name or the site to which it is connected believe or be likely to believe that “the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant?”

“... Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue.”

I do not accept that the Domain Name gives rise to confusion “as to the identity of the person/entity behind the domain name” contemplated in the Overview. As the Complainant concedes (see below) the public, when visiting the site to which the Domain Name formerly resolved is not likely to be confused into thinking it is associated with it. The Complainant’s trading name forms no part of the Domain Name and evidence provided by the Complainant shows that the brand name ‘dailies’ is used in an overwhelming majority of cases in conjunction with other terms, as in “DAILIES® Aqua Comfort Plus” and “Focus®DAILIES®TORIC”. So far as the risk of initial interest confusion is concerned, I do not believe that the Domain Name “cannot sensibly refer to anyone else”. I conclude, on a balance of probabilities, that the likelihood of confusion in this case is low.

The Complainant further argues that the PPC parking site to which the Domain Name formerly resolved, although clearly not associated with the Complainant, represented a prejudice to the its business by offering links to other, potentially competing, sites. The Respondent argues correctly that no evidence is offered of damage to the Complainant’s business. He claims also that he derived no benefit from it and has taken steps to bring it to an end. Lack of evidence, however, also hampers the Respondent when he states that he “planned” to make use of the Domain Name at some future point. No indication as to what form such use might take is provided. (See further comment on paragraph 4 of the DRS Policy below).

Much of the Respondent’s case turns on his assessment of the validity and extent of the Complainant’s trademark rights in the word DAILIES. He seems only to acknowledge the existence of the Complainant’s UK mark and argues that it does not confer such a breadth of rights as would preclude him from using the word in the Domain Name. While I accept that the Respondent may hold his views on the

Complainant's trademark rights in good faith, I cannot overlook the fact that the Domain Name in the Respondent's hands makes or has made unadorned use of the Complainant's mark to direct users to a site not under the control of the Complainant. I therefore accept the Complainant's argument that the registration is a blocking registration against a name in which the Complainant has Rights.

Finally I will consider whether the Respondent can seek assistance from Paragraph 4 of the Policy. The relevant sections of this paragraph are as follows:

4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:

i. Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:

A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

B. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

C. made legitimate non-commercial or fair use of the Domain Name; or

ii. The Domain Name is generic or descriptive and the Respondent is making fair use of it;

As to paragraph 4 a i, I have stated that I find no evidence that the Respondent has made use of the Domain Name either for a genuine offering of goods or services or by way of legitimate non-commercial fair use. Looking at paragraph 4 a ii, the Respondent might argue that the Domain Name is generic or descriptive, but once again he cannot show any fair use to which it is being put. Accordingly the paragraph 4 factors do not arise and these considerations are of no avail to the Respondent.

In the light of the foregoing analysis of the non-exhaustive factors listed under paragraphs 3 and 4 of the Policy, I conclude on the balance of probabilities that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

8. Decision

The Complainant has rights in a name which is identical or similar to the Domain Name which is an Abusive Registration in the hands of the Respondent. I direct that the Domain Name be transferred to the Complainant.

Signed Peter Davies

Dated 25 November 2013