

DISPUTE RESOLUTION SERVICE

D00013074

Decision of Independent Expert

Plum Products Ltd

and

Mr Garry Tinniswood

1. The Parties

Complainant: Plum Products Ltd
4 Henley Way
Doddington Road
Lincoln
Lincolnshire
LN6 3QR
United Kingdom

Respondent: Mr Garry Tinniswood
Lowkbers
Lowkber Lane
Ingleton
Carnforth
LA6 3JD
United Kingdom

2. The Domain Name

plumtoys.co.uk

3. Procedural History

I can 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.

The procedural history of this dispute to date is as follows:

13 July 2013, the Dispute was received by Nominet.
15 July 2013, the Complaint was validated.
16 July 2013, the Notification of Complaint was sent to the Parties.
02 August 2013, a response reminder was sent to the Respondent.
05 August 2013, a Response was received.
05 August 2013, a Notification of Response was sent to the Parties
08 August 2013, a reply reminder was sent.
12 August 2013, a Reply was received and the Notification of the Reply was sent to the Parties.
12 August 2013, a Mediator was appointed.
15 August 2013, Mediation was started.
03 February 2014, Mediation failed.
06 February 2014, close of Mediation documents were sent.
10 February 2014, the Expert decision payment was received.
17 February 2014, the Notification of Expert sent to the Parties.
04 March 2014, under paragraph 13a DRS Procedure, the Expert request was sent to the Parties.
06 March 2014, the Respondent was invited to respond to the paragraph 13a request.
12 March 2014, Nominet received the Respondent's Response.
13 March 2014, the Complainant was invited to reply to the Respondent's paragraph 13a request Response.
20 March 2014, Nominet received the Complainant's paragraph 13a request Reply.

4. Factual Background

- 4.1 The Complainant manufactures and sells children's toys, games and sporting equipment. It is the owner of various Community trade marks for the plain word mark *PLUM* (Classes 4, 8, 11, 19, 20, 21, 28 and 34) (the 'Mark'), the plain word mark *PLUM PRODUCTS* (Classes 4, 11, 19, 20, 21 and 28) and *PLUM PRODUCTS* logo (Classes 4, 11, 19, 20, 21 and 28).
- 4.2 The Complainant is also the owner of various UK trade marks for a *PLUM PRODUCTS* logo (in Classes 1, 4, 6, 8, 11, 19, 20, 21 and 28), a *PLUM CRAZY* logo (Classes 4, 7, 8, 9, 14, 18, 20, 22 and 28), a *PLUM PRODUCTS* logo (Classes 4, 8, 11, 19, 20, 21, 28 and 34) and the plain word mark *PLUM* (Classes 4, 11, 19, 20, 21 and 28) (collectively, the 'Marks').

- 4.3 The Respondent is a Director of a British Company, Activity Toys Direct Ltd. (both referenced as 'the Respondent' where the context provides). The Respondent is a retailer of outdoor play equipment, with some of the products it sells being manufactured by the Complainant. In 2012, the Respondent set up a retail website linked to the domain name *plum-products.com* to sell the Complainant's goods.
- 4.4 The Domain Name was registered on 4 April 2013.

5. Parties' Contentions

The Complaint

For the purposes of this section of the Decision, the Expert has summarised the submissions of the Parties but only insofar as they are relevant to the matters that the Expert is required to determine under Nominet's Dispute Resolution Service ('DRS') Policy (the 'Policy').

- 5.1 In summary, the Complainant submitted that the Domain Name should be transferred to it for the reasons below.

The Complainant's Rights

- The Complainant submitted that it has Rights in the name *PLUM* (the 'Name'), which is identical or similar to the Domain Name. Further, that the Domain Name consists of the Name/Mark, PLUM, "conjoined" with the principal goods, namely toys, for which the Name/Mark is registered and used by the Complainant.
- The Complainant submitted that its Marks have been used on a substantial scale in the United Kingdom and abroad for many years, in particular for toys, games and sporting equipment of the kind used by children in active play, and that it has acquired a significant reputation as a result. (Though no other evidence apart from the Complaint was provided by the Complainant to support that submission.)
- The Complainant submitted that the UK turnover by the Complainant of goods under the Marks "in the most recent year to 31st December 2012" amounted to £11.10 million.
- Although the Respondent resells the Complainant's goods in the UK using the Name/Mark to identify those goods as the Complainant's, the Complainant submitted that it has not granted the Respondent any permission or exclusivity in relation to the Name/Mark.
- Therefore, the Complainant submits that the Respondent has no personal interest in the use of the Name/Mark.

Abusive Registration

- The Complainant submitted that the registration of the Domain Name is part of a pattern of abusive Domain Name registrations by persons associated with the Respondent and of adoption of trade names identical with or confusingly similar to those of the Complainant, all for the purpose of unfairly disrupting the business of the Complainant.
- The Complainant submitted that the registration of the domain name *plum-products.com* was by a relative of the Respondent. The website attached to that domain name was operated by the Respondent, which was calculated to suggest to potential customers that it was the Complainant's website.
- Given that the Respondent was a valuable customer of the Complainant, the Complainant submitted that it initially took a "low-key approach" and requested that the Respondent cease the use of that domain name and change the website attached to that domain name to avoid any confusion with the Complainant.
- The Respondent at first changed the website to which *plum-products.com* directed. However, subsequently, the website attached to that domain name redirected to the website attached to the Domain Name (the 'Website').
- The Complainant submitted that the registration of the domain name *plum-products.com* and the Domain Name, and the websites to which they direct, as well as the trading by the Respondent as *PlumToys* or *plumtoys* on the Website, is "calculated to syphon off to [the Respondent] the goodwill created by Complainant through its use of the" Marks.
- The Complainant further submitted that the Respondent, by doing so, intended to disrupt trade in the goods under the Marks by seeking an unfair advantage and attracting an unfair proportion of the trade in such goods to the detriment of other legitimate resellers of Complainant's goods.
- The Complainant stated that it had corresponded with the Respondent on this issue and that it had "consistently objected to adoption of domain names and Trading Styles including the word Plum by [the Respondent]." The Complainant submitted that it had never agreed the use of the Domain Name or "to the Trading Style PlumToys.co.uk" by the Respondent and there is "no question of any legal estoppel."
- The Complainant submitted that the Respondent, in its e-mail of 5 July 2013, threatened to supply goods having no connection with the Complainant on the Website.

- The Complainant submitted that the Respondent would be unable to show that, prior to the Complaint being raised, the Domain Name is not an Abusive Registration as understood by reference to paragraph 4 of the Policy.

Respondent's Response

5.2 In summary, the Respondent submitted that the Domain Name should not be transferred to the Complainant for the reasons set out below.

- The Respondent submitted that the Complainant, in April 2013, complained to it that its domain name *plum-products.com* was too close to the Complainant's domain name *plumproducts.com* and could be misleading.
- The Respondent stated that it set up a conference call meeting with the Managing Director of the Complainant (that call was held on the 8 April 2013, as referenced by the Respondent in an email to the Complainant, dated 25 April 2013) (the 'Meeting').
- During the Meeting, the Respondent submitted that the Managing Director of the Complainant had outlined the Complainant's objections to the use of the *plum-products.com* domain name and had set out the criteria by which the Complainant would be "happy for us to continue to operate this site."
- The Respondent summarised those criteria, to: make it clear that the *plum-products.com* website is operated by the Respondent; make it clear that the Respondent is an authorised reseller of the Complainant's goods; change that domain name (using a domain with the word 'plum' in would be acceptable); change the colour of the website header from purple to a different colour; and, move the Complainant's logo out of the header and replace it with the Respondent's logo.
- The Respondent submitted that it had done as asked by the Complainant's Managing Director. It had:
 - added its logo to the website and made it clear in the 'About Us' section of the website that the site is run by the Respondent;
 - made it "very clear" that it is not the Complainant by stating on the home page that it is an "Authorised Plum Product Reseller";
 - changed the *plum-products.com* domain name to the Domain Name;

- changed the colour of the website header from purple to green and also changed the footer to green so that the site did not "look like" the Complainant's own website;
 - moved the Complainant's logo out of the header and replaced it with the Respondent's logo and used the Complainant's logo "in the position that was agreed with" the Complainant's Managing Director.
- The Respondent stated that the Meeting was "witnessed by 2 people" other than the Managing Director of the Complainant and the Respondent, and that at the Meeting the Parties had "formed a verbal and binding agreement and contract."
 - The Respondent submitted that during the Meeting, he had "specifically asked if [the Respondent] could register a name containing the word 'plum' in order to sell [the Complainant's] products." The Respondent "gave the example 'plumtoys' or 'plumactivitytoys' depending on what was available. [The Complainant's Managing Director] agreed to this [...]."
 - The Respondent submitted that the Complainant's Managing Director "had no objection to [the Respondent] using the word plum in conjunction with another word, or words. He stated that, apart from the domain 'plum-products.com', they had registered every domain site that they wanted and [the Respondent was] free to go back into the market for another domain."
 - Further, the Respondent submitted that the Complainant's Managing Director stated that the Respondent "could keep the name *plum-products.com* if [it] agreed not to use it" and that the Complainant "had no desire to buy it from us or force us to give it back."
 - The Respondent submitted that, at the end of the Meeting, he again sought the Complainant's Managing Director's "permission to use the [Domain Name] so as not to cause further issues once [he] had registered it." The Respondent said he was specific because he had "during the course of the conversation" looked to see if the Domain Name was available. The Respondent submitted that the Complainant's Managing Director "reiterated his permission and it was witnessed."
 - The Respondent stated that, following the Meeting, he registered the Domain Name and then redirected the website to the domain name *plum-products.com* to the Domain Name. All the above "was not done without expense."
 - The Respondent submitted that it was after the redirection was completed, and after the Complainant had taken legal advice, that the

Complainant threatened legal action over the Respondent's registration of the Domain Name.

- The Respondent explained that it then sought legal advice and was informed that under the legal term "Estoppel", the Complainant had no legal argument to "change its mind", even after it had received legal advice. (The Expert notes that other than a quote of what the doctrine of Estoppel is, no submissions were made as to why the Complainant was estopped from so acting based on the facts.) The Respondent confirmed that no formal legal action had taken place, and that it had "every right to use [the Domain Name] to sell [the Complainant's] product."
- The Respondent stated that the Website accurately describes the product the Respondent sells and that it is "very clear that [the Respondent is] not trying to pass [itself] off as the manufacturer and all images on the site were supplied to us by Plum Products with permission to use."

Complainant's Reply

5.3 In summary, the Complainant submitted that:

- While "several telephone conversations did take place, and that Respondent agreed to change both the website and the [*plum-products.com* domain name]," the Complainant "refutes the suggestion that [it] agreed to Respondent registering the Domain Name [...] or [the Respondent] trading as "plumtoys.co.uk"."
- Further, the Complainant stated that it had reacted with "incredulity" when it discovered that the Respondent had registered the Domain Name and that the Respondent was trading as *plumtoys.co.uk*.
- The Complainant submitted that, as set out in the evidence it provided as part of the Complaint, it had "consistently objected" to the registration and use of both "plum-products.com" and the Domain Name, making it "clear that these were completely unacceptable to them." A formal Witness Statement by the Complainant's Managing Director was provided to support that submission.

Paragraph 13a DRS Procedure submissions

In considering the Parties' submissions, the Expert noted that he had not been provided with Exhibits B to F, as referenced by the Complainant in its Complaint.

Under his powers as set out in paragraph 13a of Nominet's DRS Procedure (the 'Procedure'), the Expert asked that those Exhibits be provided to the

Respondent and him, that the Respondent be given an opportunity to provide a response to those Exhibits and that the Complainant be provided with the opportunity to reply to the Respondent's response.

The Parties' paragraph 13a Procedure submissions are set out below.

Respondent's 13a Response

5.4 In summary, the Respondent responded that:

- He had reviewed Annexes B through F provided to him by the Complainant. (The Expert notes that the Respondent did not provide any narrative on the contents of the Exhibits provided, including on the correspondence exhibited.) The Respondent "reiterate[d]" his understanding of what had been agreed in the Meeting and the agreed consequential actions.
- The Respondent submitted that an agreement had been reached verbally between the two Directors of the Complainant and the Respondent, and that the conversation ended with the Parties "clear about what had been discussed and agreed."
- The Respondent explained that the Complainant had provided to it its logos and images for its use on the Website. They were provided on a pen drive, together with suggested web descriptions and pre-typed bullet points to assist with the search engine optimisation of the Website.
- The Respondent submitted that all the changes that the Complainant's Managing Director had suggested at the Meeting had been made.
- The Respondent submitted that the Complainant's Managing Director had gone back on that agreement, the principal of "Estoppel" had been established and the Respondent had every legal right to use the Domain Name based on this verbal agreement.

The Respondent referenced and commented on the Nominet mediation stage but the Expert has struck those references from the record of the Dispute on the basis that it is clear at Paragraph 7 (b) of the Procedure that negotiations conducted between the Parties during the mediation stage (including any information obtained from or in connection to those negotiations) are confidential and are not to be shown to the Expert.

5.5 In summary, the Complainant replied that:

- In reference to the Exhibits provided, the Complainant submitted that it had adopted a consistent line, namely that it objected to the adoption of the domain names that included its *PLUM* Mark, and to the use of webpages that gave visitors the impression that they had

reached an official or approved website associated with the source of the Complainant's branded goods.

- Further, the Complainant submitted that its Managing Director had expressly refuted that he had given permission for the Respondent to trade under the name *plumtoys.co.uk* or for the Domain Name to be registered by the Respondent.
- The Complainant submitted that, given it has "grown to become the largest supplier of outdoor activity play equipment in the United Kingdom and a major player elsewhere in Europe and in Australia", it is "inconceivable" it would enter into such an agreement without involving external lawyers and a detailed written Agreement. At the very least, the Complainant submitted, in such circumstances Heads of Agreement would have been issued, pending a full Agreement. "There is none of this here."
- The Complainant submitted that, after the Meeting, neither side had issued a Minute nor sent an e-mail setting out what "supposedly" had been agreed.
- Further, the only contemporaneous record of what was discussed is the Complainant's Managing Director's e-mail to the Respondent of 4 April 2013 in which he set out the Complainant's objections to the *plum-products.com* domain name and website, which had been the subject of the Meeting. The Complainant submitted that the purpose of that email was to explain its concerns on a "Without Prejudice" basis in the hope that litigation against a customer could be avoided. (The Expert notes that there was no reference in the correspondence exhibited to such correspondence being "Without Prejudice".)
- The Complainant submitted that it was not until it had objected again on 23 April 2013 to the use of the Domain Name that the Respondent started "saying anything different." Further, the account the Respondent gave in his e-mail of 25 April 2013 of the exhibited correspondence "differs significantly" from what the Respondent is now claiming was agreed, namely that the Complainant gave its express permission for registration and use of the Domain Name.
- The Complainant submitted that the Expert "may reasonably conclude" that no such Agreement as claimed by the Respondent was ever reached.
- The Complainant submitted that, in response to the Respondent putting weight on the fact that the Complainant had supplied it with copies of its logo and images of the products concerned, such action is standard practice for Internet sales by third-parties and irrelevant to the Complaint. Further, such action does not imply that

the Internet retailer is entitled to use those logos and the name of the supplier as if it were its own.

6. Discussions and Findings

General

6.1 To succeed in the Complaint, the Complainant has to prove pursuant to paragraph 2 of the Policy that, on the balance of probabilities:¹

"a. (i) [it] 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."

6.2 Addressing each of these limbs in turn:

i) Rights in respect of a name or mark which is identical or similar to the Domain Name

6.3 The Expert considers that, for the reasons set out below, the Complainant has Rights in the Name/Mark as understood by the Policy.

6.4 Paragraph 1 of the Policy defines 'Rights' 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 Complainant must have the Rights in question at the time of the complaint.²

6.5 The Expert notes that, while he has been provided with statements by the Complainant and its Managing Director as to the extent of the Complainant's sales in the market place, no other evidence was provided to support the claim that it had developed considerable goodwill and reputation in the Name. However, the Expert notes that, as referred to by the Complainant and summarised at paragraphs 4.1, 4.2 and 5.1 above, the Complainant is the proprietor of a number of trade mark registrations in respect of the Name.

6.6 The Expert considers that, on the balance of probabilities, the suffix 'toys' is a descriptive element in the Domain Name and does not sufficiently distinguish the Domain Name from the respective Name/Mark. That suffix

¹ I.e. on the basis that the Complainant's case is more likely than not to be the true version, see <http://www.nominet.org.uk/disputes/drs/legalissues/>.

² See, for example, Nominet Appeal decision, *ghd*, DRS No. 03078, at page 9, para 9.2.2.

should be discounted from the consideration of whether or not the Domain Name is identical or similar to the Complainant's Name/Mark.

- 6.7 Given those factors, the Expert considers that, at the time of the Complaint, the Complainant had Rights in the Mark, which is at least similar to the Domain Name. In concluding the above, the Expert has also disregarded the domain suffix 'co.uk' and the hyphens.
- 6.8 Thus, noting the fact that the requirement to demonstrate 'Rights' is not a particularly high threshold (Nominet appeal panel decision, *Seiko-shop* DRS 00248), the Expert considers that the evidence before him is sufficient to establish that, at the time of the Complaint, the Complainant had relevant Rights in relation to the Domain Name.

ii) Abusive Registration

- 6.9 For the reasons set out below, the Expert considers that the Domain Name is an Abusive Registration as understood by the Policy.
- 6.10 Paragraph 1 of the 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;"

- 6.11 *In relation to i. above* – the Expert considers that the Domain Name was an Abusive Registration at the time the Domain Name was registered.
- 6.12 The Policy, at paragraph 3, sets out a non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration. Specifically, the Expert considers that the factor set out at paragraph 3 a. i. C. is relevant: namely, where the Respondent has registered the Domain Name primarily "*for the purpose of unfairly disrupting the business of the Complainant;* "
- 6.13 In relation to the above factor, the Respondent's knowledge of the Complainant when registering the Domain Name needs to be shown.³ In this regard, the Expert notes that the Respondent was an authorised reseller of the Complainant's goods prior to the registration of the Domain Name and, as submitted by the Respondent, registered the Domain Name in order to use it to sell the Complainant's goods.
- 6.14 Given the above, the Expert considers that the Respondent would have been well aware of the Complainant and the Name/Mark at the time of his registration of the Domain Name.

³ Based on previous DRS decisions (e.g. DRS appeal decision *verbatim.co.uk* (DRS 4331)).

- 6.15 The Expert considers that the Respondent specifically chose to register the Domain Name to benefit from the Complainant's reputation and goodwill, to attract to the Website users who were looking to purchase the goods being sold by the Complainant.
- 6.16 The Respondent has submitted that he had the Complainant's binding permission given to him at the Meeting to register the Domain Name. This is difficult to reconcile with the fact that the Domain Name was actually registered prior to the Meeting: the Domain Name was registered on 4 April 2013 but, as it appears from an email from the Respondent to the Complainant dated 12 June 2013, the Meeting was held on 8 April 2013. While the Expert has been unable to reach a definitive conclusion on the basis of the limited materials before him, he considers that on the balance of probabilities the Respondent registered the Domain Name prior to the Meeting.
- 6.17 The only permission upon which the Respondent relies is that which is said to have been given to him by the Complainant at the Meeting. There is no suggestion in the submissions the Expert has received that there was any such permission pre-dating the Meeting. Accordingly, the Expert considers that no such permission had been given by the Complainant at the time of the registration of the Domain Name.. In any event, for the reasons set out at 6.24 *et seq.* below, on the balance of probabilities the Expert is not persuaded that the Complainant gave the Respondent binding permission to register and use the Domain Name at the Meeting.
- 6.18 Therefore, for the reasons set out above, the Expert considers that the registration of the Domain Name took unfair advantage of, and/or was unfairly detrimental to, the Complainant's Rights.
- 6.19 In relation to (ii) above – the Expert also considers that the Domain Name was an Abusive Registration as a result of its manner of use by the Respondent.
- 6.20 The Expert considers paragraph 3 a. ii. of the Policy as relevant, whereby a factor which may be evidence that the Domain Name is an Abusive Registrations is:
- "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;"*
- 6.21 The Expert considers that the Respondent set up the Website in a way that, through use of the Complainant's Mark and the get-up of the Website (including the prominence of the Mark and reference to the Domain Name), anyone accessing the Website would likely be confused, at least

initially,⁴ into thinking that the Website is the Complainant's or is somehow commercially connected with the Complainant.

- 6.22 In any event, the Expert is not persuaded by the argument that a person accessing the Website would soon realise his/her mistake through the changes made to the Website by the Respondent as described in paragraph 5.2 above; the damage to the Complainant's business would have already been done. Those persons accessing the Website would have done so only because of the Complainant's goodwill and reputation in the Name/Mark.
- 6.23 The Expert considers that, by using the Domain Name as described, the Respondent has taken unfair advantage of the Complainant's Rights. Also, that such use of the Domain Name as described above is unfairly detrimental to the Complainant's Rights as the Complainant is likely to have lost direct sales due to the Respondent's use of the Domain Name.
- 6.24 As mentioned above in relation to the first limb of Abusive Registration, the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. The Respondent seeks to rely on a verbal "agreement" made between him and the Complainant's Managing Director during the Meeting to evidence that the Domain Name is not an Abusive Registration.
- 6.25 The Respondent relies on his account of what was discussed and agreed at the Meeting as evidence that the Complainant agreed that the Respondent could register and use the Domain Name. The Respondent's submission as to what was agreed in the Meeting is set out in paragraph 5.2 above. However, no other evidence was supplied in support of the Respondent's version of events.
- 6.26 In reply, the Complainant denied that any such agreement was made at the Meeting. In support, the Complainant exhibited various email correspondence between the Parties and also provided an affidavit from the Complainant's Managing Director to evidence that the Complainant has "consistently objected to the adoption of domain names and Trading Styles including the word Plum."
- 6.27 In this regard, the Expert notes from the correspondence exhibited by the Complainant, that the Complainant stated in his email of 4 April 2013 to the Respondent that its "use of the domain name Plum-Products.com is not acceptable as it creates the impression that it is our site, the genuine owner of the trade mark and the manufacturer of the brand." This statement was made prior to the Meeting.
- 6.28 Further, in an email from the Complainant to the Respondent dated 23 April 2013, the Complainant stated that "[w]e are not happy with any use of the name Plum or Plum Products in a web site domain name used for selling toys." That statement was made shortly after the Meeting.

⁴ For a discussion of the concept of 'initial interest confusion' and recent case-law, please see the English High Court judgment in *OCH-ZIFF MANAGEMENT EUROPE LIMITED and others v OCH CAPITAL LLP and others* [2010] EWHC 2599 (Ch). See also the DRS Experts' Overview at paragraph 3.3.

- 6.29 In reply, in an email dated 25 April 2013, the Respondent stated to the Complainant that his email "does not reflect the last conversation we had [at the Meeting]. We took detailed notes during the call." The Expert has not been provided with the 'detailed notes' referred to. The Complainant then emailed its legal representative on 1 May 2013 and stated that "I spoke to you about a customer of ours who had registered the domain name "Plum-Products.com" [...] I do not think that [the Respondent] gets the point that we are not happy about this."
- 6.30 On the balance of probabilities, based on the evidence before him, the Expert considers that the statements made to the Respondent by the Complainant in the emails exhibited, initially in relation to the *Plum-Products.com* domain name but later also about the registration of the Domain Name (in the email dated 23 April 2013 from the Complainant to the Respondent), clearly indicate that the Complainant did not agree to the registration and use of domain name/Domain Name with the Complainant's Name/Mark in them.
- 6.31 Further, the Expert considers that, while there may have been general discussions at the Meeting as to the terms and conditions under which the Respondent might use the Complainant's Name/Mark, the Expert considers it unlikely that the Complainant agreed at the Meeting to the Respondent registering and using the Domain Name: there was no meeting of minds on the issue.
- 6.32 On this basis the Expert considers that the evidence before him does not support the Respondent's contention that a binding agreement existed between the Respondent and Complainant such that the Respondent's use of the Domain Name was not an Abusive Registration or that the Complainant was estopped from bringing the Complaint.
- 6.33 Finally, the Complainant submitted that there was a pattern of abusive domain name registrations by the Respondent. Pursuant to paragraph 3. A. iii. of the Policy, which the Expert considers the Complainant is referring to in its submission, for such a pattern to be shown the Respondent must have "no apparent rights" in the Domain Names registered. However, the Expert has no evidence before him that this 'test' is met.

7. Decision

- 7.1 The Expert finds that, on the balance of probabilities, the Complainant has Rights in respect of the Mark which is at least similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. Therefore, the Expert directs that the Domain Name be transferred to the Complainant.

Signed: Dr Russell Richardson

Dated: 7 April 2014