

DISPUTE RESOLUTION SERVICE

D00014748

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

Welton Holdings Limited

and

Shiham-Majestics

1. The Parties:

Lead Complainant: Welton Holdings Limited
Suite 8-9 West House
West Street
Ramsey
Isle of Man
IM8 1AE
Isle Of Man

Respondent: Shiham-Majestics
90B
Sector-18
Gurgaon
gurgaon
122015
India

2. The Domain Name(s):

tlc188.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 name tlc188.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)

It is with some reluctance that I reject the Complaint on the grounds that the Complainant has failed to demonstrate that it has any rights in the term "TLC" or "TLC188".

In its Complaint, the Complainant contends that Neil Alexander Entertainment Ltd ("NAEL") own the worldwide rights to the term "TLC" and that these rest with the Complainant in "the UK and the Isle of Man" by virtue of an agreement. Nevertheless, what exactly those rights are is not explained and the agreement is not produced in evidence.

The Complainant contends that the relevant rights can be verified "by searches on the ownership of tlc188.com". It is not an expert's job to perform "searches". It is for the Complainant to evidence its contentions. Nevertheless, I have looked at the publically available Whois records for that domain name. These show that the domain name is held in the name of a privacy service and give no indication as to the ultimate owner of the domain name.

The Complainant also contends that a search of the Isle of Man Gambling Supervision Commission licensee page at <http://www.gov.im/gambling/licensees/> demonstrates that WHL is licensed to operate the TLC brand. Again my comments about it not being an expert's job to perform a search apply. Nevertheless, I have looked at the page and it does indeed appear to show that the Complainant holds an Isle of Man Gambling Supervision Commission licensee in respect of a website operating from the domain name <tlc188.com>¹.

However, when one looks at the copy of a page from that website provided by the Complainant, it is apparent that it is in Chinese. I have also verified this by visiting the website in question and it is also apparent that there are references on the website to RMB (the usual abbreviation for the Chinese currency, the Renimbi). In short, the material I have seen suggests that regardless of where the Complainant may be regulated, its business activities are in China.

Further, the Complainant contends "WHL is presently allowed to advertise remote gambling in the UK by virtue of the whitelist in place for jurisdictions such as the Isle of Man and will soon be launching a dedicated UK site". In other words, this appears to be an admission that there is as yet no UK business activity.

I note that the Complainant refers to advertisements that have featured on LED hoardings at the ground of Sunderland AFC. It seems reasonably clear as matter of English law that pre-launch advertising in the UK can generate goodwill that provides rights under the law of passing off (see Starbucks (HK) Ltd & Ors v British Sky Broadcasting Group Plc & Ors [2012] EWHC 3074 (Ch) at para 135). However, given the international reach of Premier League football, the current content of the website operating from the <tlc188.com> domain name and an absence of any evidence of what form those LED advertisements took, I do not think I can safely conclude that those advertisements were even in part directed to potential customers in the UK.

Of course, the fact that a complainant cannot demonstrate rights in the United Kingdom, is not necessarily fatal. A complainant can rely upon rights anywhere in the world for the purposes of the Policy (see paragraph 1.5 of the Expert's Overview). Given that the <tlc188.com> website is directed to persons in China, one would have thought some form of Chinese right might be claimed. But there is no reliance on any such right in the Complaint and if taken at face value the Complainant appears to suggest that such rights are held by NAEL.

There is an express claim of rights in the Isle of Man, but what these are is not really explained. If the allegation is one of rights under the Manx law of passing off (and assuming in the Complainant's favour that passing off

¹ In fact the relevant webpage identifies the Complainant's website as operating from the domain name <tlc88.com>; i.e. the number "1" is missing. However, when one clicks on the link provided one is eventually directed to the Complainant's <tlc188.com> website. I will therefore assume in the Complainant's favour that this discrepancy is of no significance.

is a cause of action recognised by Manx law), I am not convinced that a mere fact that the Complainant has a licence from the Isle of Man Gambling Supervision Commission to operate a website directed to Chinese consumers that uses the term “tlc188”, grants any enforceable right in that term under the law of passing off. If the allegation is that the mere fact of a licence grants such an enforceable right, I am similarly unconvinced.

As I have said, the conclusion that the Complainant has failed to show relevant rights is one I have reached with some reluctance. The main reason for this is that I accept the Complainant’s contention that material on the website operating from the <tlc188.co.uk> domain name suggests that this website is in some way authorised by the Complainant when it is not. Further, I am mindful that the rights test under the Policy is frequently described as a “relatively low threshold” and there has been a tendency by panels to take a liberal approach to what constitute enforceable rights for the purposes of the Policy (see the decision of the Appeal Panel in *Hvidbro-Mitchell v Croxford DRS 12276*). But ultimately it is still for a complainant to prove its case even so far as this requirement is concerned. On this occasion the Complainant has not done so.

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"/>		

Signed: Matthew Harris

Dated: 17th October 2014