

DISPUTE RESOLUTION SERVICE

D00015521

Decision of Independent Expert

Pet Plan Limited

and

Ultimate Projects Limited

1. The Parties

Complainant: Pet Plan Limited
57 Ladymead
Guildford
Surrey
GU1 1DB
United Kingdom

Respondent: Ultimate Projects Limited
Eagle House
Cranleigh Close
South Croydon
Surrey
CR2 9LH
United Kingdom

2. The Domain Name

petplans.co.uk

3. Procedural History

3.1 I, Patricia Jones ("the Expert"), 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.

3.2 On 17 February 2015 the complaint was received. On 18 February 2015 the complaint was validated and notification of it sent to the parties. On 9 March 2015 a response reminder was sent. On 12 March 2015 the response was received and notification of it sent to the parties. On 17 March 2015 a reply reminder was sent. On 19 March 2015 the reply was received and notification of it sent to the parties. On 24 March 2015 the mediator was appointed and the mediation started. On 16 April 2015 the mediation failed and close of mediation documents were sent to the parties. On 28 April 2015 the Complainant was sent a full fee reminder and the Expert decision payment was received.

4. Factual Background

4.1 The Complainant provides pet insurance in the United Kingdom ("UK") for domestic animals such as dogs, cats, rabbits, horses, reptiles, birds and small mammals. It also offers insurance to pet care professionals and provides a pet finding service. The

Complainant was founded in 1976 and is a subsidiary of Allianz Insurance plc, one of the largest general insurers in the UK.

- 4.2 The Complainant is the owner of the following trade mark registrations:
- (a) UK trade mark no.00002052294 for a stylised form of 'Petplan' registered on 17 January 1997 for insurance brokerage relating to pets all included in class 36;
 - (b) UK trade mark no.00002222270 for a serious of 5 'Petplan' and 'Pet plan' marks registered on 6 April 2001 in classes 6, 16, 25, 35, 36, 41, 42 and 45;
 - (c) Community trade mark no 000328492 for a stylised form of 'Petplan' registered on 16 October 2000 for insurance brokerage relating to pets all included in class 36;
 - (d) Community trade mark no 001511054 for a stylised form of 'Petplan' registered on 18 December 2001 in classes 16, 25, 26, 35, 36, 41 and 42;
 - (e) Community trade mark 011470465 for a design which incorporates 'Petplan' registered on 12 July 2013 in classes 6, 16, 18, 35, 36, 41 and 44; and
 - (f) US Reg. No. 3161569 for a stylised form of 'Petplan' registered on 24 October 2006 in classes 6, 16, 25, 36 and 41.
- 4.3 The Complainant owns petplan.com which was registered on 10 March 1996 and Allianz Insurance plc owns petplan.co.uk which was registered before August 1996. The Complainant and Allianz Insurance plc own a large domain name portfolio which includes many 'petplan' domain names.
- 4.4 The Domain Name was registered on 8 May 2008 and is not in use.

5. Parties' Contentions

- 5.1 I set out below a summary of what I regard to be the main contentions of the parties.

The Complainant's complaint

- 5.2 The Complainant contends that it has Rights in respect of a name or mark which is identical or similar to the Domain Name for the following reasons:
- (a) The Complainant states that it has continually operated under the Pet Plan name and has used the PETPLAN mark in connection with its pet insurance products, growing to be the world's largest pet insurer. The Complainant says that it offers a wide range of pet insurance products from individual policies for animals to insurance for anyone in the business of pet care. The Complainant argues that PETPLAN is a distinctive and well-known mark which has been used in connection with pet insurance for nearly 20 years.
 - (b) The Complainant argues that the Domain Name is confusingly similar to its trade mark registrations for PETPLAN because it is a purposeful misspelling of the PETPLAN mark and is simply the plural form. The Complainant states that, according to its DNS provider, petplan.co.uk receives almost 400,000 hits a month and petplan.com receives an additional 21,000 hits a month.
 - (c) The Complainant says that it has made significant investment over the years to advertise, promote and protect its trade marks through various media, including the Internet. The Complainant argues that based on its extensive use and trade mark registrations it owns the exclusive right to use the PETPLAN mark in a number of different classes.

- 5.3 The Complainant contends that the Domain Name is an Abusive Registration for the following reasons:
- (a) The Complainant says that its earliest registered rights in the PETPLAN mark in the UK are 12 years prior to registration of the Domain Name. The Complainant states that it has built significant fame and goodwill in the PETPLAN mark with sales and marketing over nearly 40 years, including 20 years under its registered PETPLAN trade mark. The Complainant says that the traffic generated by it together with its extensive domain name portfolio, which includes numerous domain names incorporating the PETPLAN mark, demonstrate that the Complainant and its PETPLAN mark are well known.
 - (b) The Complainant argues that it is blocked from having a web site at the Domain Name. The Complainant says that it has been in the UK market for nearly 40 years prior to registration of the Domain Name, the Domain Name has been unfairly registered by the Respondent in breach of the Complainant's trade mark rights and the Respondent had no legitimate reason for registering the Domain Name.
 - (c) The Complainant states that the Respondent is not associated or affiliated with it nor has the Complainant authorised the Respondent to register or use the Domain Name.
 - (d) The Complainant argues that the Domain Name implies and Internet users and potential customers would initially infer that any web site hosted at the Domain Name is an official web site of the Complainant or is officially authorised by it. The Complainant says that even though the Respondent has not posted an active web site at the Domain Name it would be illogical to await the Respondent's use of the Domain Name to find an Abusive Registration. The Complainant says the Respondent has not made use of the Domain Name since registration other than briefly for pay per click links and the Respondent can have no legitimate purpose for registering the Domain Name. The Complainant states that its reputation and business could be detrimentally affected by the Respondent's use of the Domain Name.
 - (e) The Complainant argues that the Respondent has engaged in a pattern of cybersquatting by acquiring domain names in bad faith in which the Respondent has no apparent interest. The Complainant relies on the following domain names: porsche.org.uk registered on 19 September 2008; isuzuhoddesdon.co.uk and isuzu-hoddesdon.co.uk both registered on 21 December 2010; and eltonjohn.org.uk registered on 22 September 2008. The Complainant says that each of these domain names correspond to well-known third party trade marks and have the potential to infringe third party rights.
 - (f) The Complainant says that it attempted to settle this matter amicably, the Respondent did not respond to its cease and desist notices and that it had no other choice but to make this complaint.
 - (g) The Complainant states that the Respondent has not been commonly known by the term 'PET PLANS' and is not legitimately connected with a mark which is identical or similar to 'PET PLANS'. The Complainant argues that the Respondent has not made legitimate non-commercial or fair use of the Domain Name. The Complainant also argues that the Domain Name is not generic or descriptive and the Respondent is not making fair use of it.
- 5.4 The Complainant says in summary that the Domain Name is identical or similar to its PETPLAN mark in which the Complainant has owned Rights prior to registration of the

Domain Name; that the Domain Name in the hands of the Respondent is abusive as it is a blocking registration that prevents the Complainant from operating a site at the Domain Name and also confuses Internet users looking for the Complainant and its services; that the Respondent is not commonly known by the Domain Name or legitimately connected with a mark which is identical or similar to the Domain Name; and the Domain Name is not generic or descriptive and the Respondent is not making fair use of it.

The Respondent's response

5.5 The Respondent responds to the complaint as follows:

- (a) The Respondent says that the Complainant has no rights to the Domain Name as there is no UK trade mark for 'petplans' or 'pet plans'.
- (b) The Respondent says that the web page exhibited to the complaint showing pay per click links at the Domain Name comes from archive.org and is for June 2011. The Respondent states that it purchased the Domain Name in November 2012 and that it had no control of the Domain Name in June 2011.
- (c) The Respondent argues that there is no pattern of cybersquatting. The Respondent says that whilst Porsche is widely recognised as a brand of motor cars, it is also a first name and a surname and that buying domains with a christian or surname is acceptable practice; that isuzuhoddesdon.co.uk and isuzu-hoddesdon.co.uk were registered on behalf of a client, Isuzu Hoddesdon Limited; and that eltonjohn.org.uk was registered on behalf of a very keen Elton John fan who intends to create a tribute site, which is acceptable use under the Nominet Dispute Resolution Service Policy ("the Policy").
- (d) The Respondent argues that the Domain Name is not a blocking registration as the Complainant does not have a trade mark for 'petplans' and does not appear to be the registrant of a 'petplans' domain name. The Respondent points out that the Complainant's exhibited portfolio of approximately 250 domain names in several TLD's and gTLD's does not contain any which are the same as 'petplans'. The Respondent relies on the Complainant not being the registrant of petplans.com, petplans.net, petplans.org and petplans.com.au.
- (e) The Respondent states that as there is no site at the Domain Name it is impossible to claim that the Complainant's business has been unfairly disrupted.
- (f) In response to the allegation that the Respondent is not commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name, the Respondent states that it registers generic and descriptive domains in many "verticles" making this point irrelevant.
- (g) The Respondent states that as the Domain Name is not in use, the use cannot be deemed unfair. The Respondent says that it is not for the Complainant to decide fair use and relies on the Policy that failure to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration.
- (h) The Respondent argues that there is not only one possible application for the term 'petplan(s)' as relating to the Complainant's insurance business. The Respondent relies on the following sites for businesses which it states are unrelated to the Complainant yet freely use the term Pet Plan(s):
 - (i) <http://www.vets4pets.com/healthy-pet-special-offers/complete-care/>

(ii) <http://preventplans.net/plans/>

"Veterinary Well Pet Plans

A Prevent Plan is a discounted, pre-paid block of preventive healthcare services for you, your dog, cat or even your horse. Our plans are designed wholly for preventive health care as this is a heavily disregarded part of care for people, Pets and horses. Together with a healthy diet, preventive healthcare is the most important thing you can provide yourselves, your Pet or horse throughout your lives. No, this is not an insurance plan, it's so much better than that. Our plans are a quality, membership plan that allows the focus to stay on preventive care. Most insurance only provide coverage for unforeseen illnesses or injuries. Our plans not only include the preventive services, but provide a discount on other healthcare services, which may include: surgical services and prescription medications."

(iii) <http://www.walkjogrun.net/training/dog/training-plans.cfm>

Complainant's Reply

5.6 The Complainant replies to the Respondent's response as follows:

- (a) The Complainant rejects the Respondent's argument that it has no rights in the Domain Name. The Complainant re-asserts that the Domain Name is the plural of its famous PETPLAN trade mark, which is registered in numerous jurisdictions, and is a one-letter misspelling of the Complainant's domain name. The Complainant argues that the addition of 's' to the PETPLAN mark does not change the distinctive character of the Complainant's trade mark, which was registered in 1996 and used in commerce since 1976. The Complainant states that its rights in the PETPLAN mark are well-established and supersede any claim that the Respondent could make to the Domain Name. The Complainant says that the Respondent's failure to present any evidence of its right to use the Domain Name means that the Respondent has no claim to the use of the PETPLAN mark, or anything similar, in the Domain Name or elsewhere.
- (b) The Complainant says the Domain Name is a blocking registration as it prevents the Complainant from registering a domain name that contains its PETPLAN trade mark and controlling the content on the site.
- (c) The Complainant argues that the Domain Name unfairly disrupts its business. The Complainant says that a user who mistakenly types the plural version of the Complainant's primary domain name would be unintentionally directed to the Respondent's web site. The Complainant further says that having arrived at a blank web site that does not feature any active content, Internet users would be unfairly confused and misled into believing that the Complainant had perhaps moved its web site, closed its business or otherwise ceased to provide services. The Complainant states that the potential for disrupting the Complainant's business is concerning, particularly where the Domain Name is merely a typo squatted version and one-letter misspelling of the Complainant's trade mark and primary domain name. The Complainant says that even though there is not currently a web site at the Domain Name, the Respondent is able to post a web site at any time, including one that may be used for even more abusive purposes. The Complainant argues that it would be illogical to allow the Respondent to continue to control the Domain Name in order to determine that it is an Abusive Registration.

- (d) The Complainant disputes the Respondent's assertion that PETPLAN may legitimately be used in numerous scenarios. The Complainant says the Respondent has made no use or application of 'PETPLAN' at all, that the Domain Name does not resolve to active content and has not been actively used since its registration or the claimed purchase by the Respondent in November 2012 (which the Complainant says is unsubstantiated). The Complainant states that only one of the web sites relied on by the Respondent uses the PETPLAN mark and this site is a partner of the Complainant and is authorised to use the PETPLAN mark. The Complainant says the other web sites do not use the PETPLAN mark. The Complainant argues that the Respondent's non use of the Domain Name evinces the Respondent's lack of rights in the Domain Name and that the Respondent has made no attempt to use the Domain Name for any legitimate purpose since its registration.
- (e) The Complainant says that as the Respondent is not commonly known by the Domain Name or legitimately connected with a mark which is identical or similar to the Domain Name this reinforces the Complainant's claim that the Respondent registered the Domain Name merely for its similarity to, and the fame acquired by, the Complainant's PETPLAN mark and domain name. The Complainant says that the Respondent purports to be in the business of registering domain names but has provided no evidence to substantiate its claim that certain of its domain names were registered on behalf of clients. The Complainant says that the two domains names purportedly registered by the Respondent on behalf of Isuzu Hoddesdon Limited resolve to pay per click sites despite being registered on 21 December 2010 and argues this does not give credence to the claim that these domain names were registered for a legitimate business. The Complainant says it is more likely than not the Respondent registers domain names in the hope of later selling them for a profit or using them to generate pay per click traffic and revenue; as such the higher the traffic associated with a domain name the higher its value to the Respondent. The Complainant contends that the Respondent, having recognised the fame and value of the Complainant's PETPLAN trade mark and the significant traffic associated with the Complainant's domain name, registered the Domain Name to trade off the Complainant's rights in the PETPLAN trade mark. The Complainant says that when viewing and reading the terms that comprise the Domain Name in the order in which they appear the meaning becomes more specific – the terms 'pet' and 'plans' are not commonly used together and, given the Respondent's business and other domain name registrations, it becomes obvious that the Domain Name is meant to give the impression of being related to the Complainant as a way of taking advantage of and profiting off the goodwill, fame and popularity of the Complainant's PETPLAN trade mark and domain name. The Complainant argues the Domain Name should be viewed as specifically targeting it, which qualifies as an Abusive Registration.
- (f) The Complainant re-asserts that as the Domain Name is a plural version and one-letter typo of the PETPLAN mark it is confusingly similar to the Complainant's PETPLAN trade mark. The Complainant says the Domain Name is not generic or descriptive, that it is more likely than not the Respondent knew of and targeted the Complainant's trade mark and the Respondent's registration of the Domain Name constitutes an Abusive Registration.

6. Discussions and Findings

- 6.1 Paragraph 2 of the Policy sets out that for a Complainant's complaint to succeed it must prove to the Expert 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.
- 6.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

The Complainant's Rights

- 6.3 Under Paragraph 1 of the Policy, Rights is defined 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.” It is well accepted that the question of Rights falls to be considered at the time the Complainant makes its complaint and is a test with a low threshold to overcome.
- 6.4 The name PETPLAN is a combination of dictionary words which on their own are in common use but together are not a common expression. On the face of it, the combination is potentially descriptive of a plan for a pet. However, I am satisfied that the Complainant has established Rights in the PETPLAN mark and that it is distinctive of the Complainant in the field of pet insurance.
- 6.5 The Complainant owns a number of registered trade marks for PETPLAN. Whilst certain of these registrations relate to a stylised form of ‘petplan’, the word PETPLAN is the dominant element of these registrations. I am therefore satisfied that the Complainant owns Rights in the mark PETPLAN.
- 6.6 Further, the Complainant has traded under the PETPLAN mark for nearly 40 years, has a significant number of monthly hits on its sites at petplan.co.uk and petplan.com and has grown to be the world’s largest pet insurer. I therefore consider the Complainant also has unregistered Rights through use in the PETPLAN mark.
- 6.7 I regard the PETPLAN mark to be similar to the Domain Name (disregarding the .co.uk). I do not consider the addition of ‘s’ to ‘petplan’ is sufficient to distinguish the Domain Name from the PETPLAN mark. It merely suggests the plural form of the mark and the dominant element of the Domain Name is ‘petplan’.
- 6.8 Accordingly, I find that the Complainant has Rights in the name or mark PETPLAN which is similar to the Domain Name.

Abusive Registration

- 6.9 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.
- 6.10 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration under paragraph 1(i) of the Policy is set out at paragraph 3(a)(i) of the Policy as follows:

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.
- 6.11 A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is set out at paragraph 4(a) of the Policy including paragraph 4(a)(ii) that the Domain Name is generic or descriptive and the Respondent is making fair use of it.
- 6.12 In this case there is no evidence that the Domain Name has been used for an active web site save for a web page from June 2011 which comes from the Internet Archive Wayback machine. This is a Sedo parking page which says the Domain Name may be for sale by its owner and features "related searches" for Pet supplies, Dramamine dosage for dogs, Free puppies, Pets, Dogs, Animals, Birds, Cats, Pets for sale and Zoo.
- 6.13 The Respondent states that it was not responsible for this site content and that it only acquired the Domain Name in November 2012. I am doubtful about the Respondent's acquisition of the Domain Name at this time given that the Respondent has provided no evidence to substantiate it. Nevertheless, I shall proceed on the basis that the Respondent acquired the Domain Name in November 2012 and that the Respondent has made no active use of the Domain Name. I will therefore focus on whether, on the balance of probabilities, the Respondent acquired the Domain Name with the Complainant in mind and with abusive intent.
- 6.14 Paragraph 3(b) of the Policy sets out that failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration. However, this is only one consideration for me to take into account in determining whether the Complainant has established that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 6.15 The Nominet Dispute Resolution Service – Experts' Overview¹ ("the Overview") states the following in relation to non-use of a domain name:
- "Moreover, some Experts have found that in certain circumstances, e.g. where the name is a known brand and the Respondent has no obvious justification for having adopted the name and has given no explanation, the non-use itself can constitute a threatened abuse hanging over the head of the Complainant."*
- 6.16 The Overview cites as a relevant decision DRS0658 chivasbrothers.co.uk. In that case the expert considered CHIVAS BROTHERS to be exclusively referable to the complainant, to be a distinctive name and in the context of alcoholic beverages a very famous name. The expert viewed it as inconceivable that the respondent registered the domain name without having the complainant firmly in mind. The expert thought that there was no obvious reason why the respondent might be said to have been

¹ The purpose of the Overview is to assist all participants or would-be participants in disputes under the Policy by explaining commonly raised issues and how Experts have dealt with those issues to date. It also draws attention to areas where Experts' views differ.

justified in registering the domain name and the respondent had elected not to come forward with any explanation for his registration of the domain name.

6.17 The expert said as follows:

“While it may be possible (at least theoretically) that the Respondent registered the Domain Name for no purpose at all, the Expert regards that as most improbable. What could the Respondent’s purpose have been? It could have been with a view to making a use of it, or it could have been with a view to selling it, or simply to block the Complainant. We are left to speculate because the Respondent has not responded, nor has the Respondent made any use at all of the Domain Name.

Where a Respondent registers a Domain Name:-

- 1. which is identical to a name in respect of which the Complainant has rights; and*
- 2. where that name is exclusively referable to the Complainant; and*
- 3. where there is no obvious justification for the Respondent having adopted that name for the Domain Name; and*
- 4. where the Respondent has come forward with no explanation for having selected the Domain Name,*

it will ordinarily be reasonable for an expert to infer first that the Respondent registered the Domain Name for a purpose and secondly that that purpose was abusive. In this case the Expert draws those inferences.”

6.18 The expert went on to find on the balance of probabilities that the respondent registered the domain name for one or more of the purposes set out in paragraph 3(a)(i) of the Policy or for some other abusive purpose.

6.19 The Complainant relies on the decision in DRS0956 kodapost.co.uk. In that case there was no evidence of any use of the domain name and there was no allegation that the respondent had sought to sell the domain name to the complainant for a sum in excess of its documented out-of-pocket costs. Nevertheless, the expert considered the respondent had no legitimate purpose in registering the name. The expert found:

- (a) the trade name “Kodapost” was a well-known brand name which had substantial goodwill attaching to it;
- (b) there was no evidence that, so far as the general public is concerned, the name “Kodapost” denoted any entity other than the complainant; and
- (c) although the domain name was unused, any realistic use of it by the respondent would constitute passing off and/or trade mark infringement and the domain name was therefore an “instrument of fraud” in the hands of the respondent.

6.20 The Complainant also relies on the decision in DRS09819 relating to non-use of a number of domain names. The expert in that case said that the respondent made a number of claims which if supported by evidence would suggest that the disputed domain names in its hands were not Abusive Registrations and were held legitimately by the respondent on behalf of a client with rights in the name. The expert found that on balance, even though the domain names were not currently in use, taking into account the materials submitted by the respective parties it was more probable than not that they were registered to take advantage of the trade mark rights of the complainant. In the current case the Respondent does not allege that the Domain Name was registered on behalf of a client who may have rights in the ‘petplans’ name.

- 6.21 In order for there to be an Abusive Registration under paragraph 1(i) of the Policy, it needs to be established that the Respondent had knowledge of the Complainant and/or its Rights at the time of acquisition of the Domain Name. The Complainant's evidence demonstrates that PETPLAN is a well-known mark in the field of pet insurance. As such it is reasonable to infer that the Respondent had knowledge of the PETPLAN mark at the time of acquisition of the Domain Name.
- 6.22 What does the Respondent say about its knowledge of the Complainant? In reply to the Complainant's allegation that the Respondent is not commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name the Respondent says it "*registers generic and descriptive domains in many verticles making the above point irrelevant*". This appears to be the closest the Respondent comes to giving an explanation for its acquisition of the Domain Name. The Respondent does not say anything about whether it was aware of the Complainant at the time of acquisition of the Domain Name. I would expect the Respondent to say it was unaware of the PETPLAN mark when it purchased the Domain Name, if that was the case. Having weighed the evidence, I consider that, on the balance of probabilities, the Respondent was aware of the PETPLAN mark when it acquired the Domain Name.
- 6.23 In a similar manner to the expert in DRS0658 chivasbrothers.co.uk, I consider it highly improbable that the Respondent purchased the Domain Name for no purpose at all. This leads to a consideration of why the Respondent acquired the Domain Name. Was it for one of the purposes set out at paragraph 3(a)(i) of the Policy or for some other abusive purpose? In my view there are a number of factors to take into account in determining what the Respondent's motive was for purchasing the Domain Name.
- 6.24 The Complainant has established that PETPLAN denotes the Complainant's business. The Respondent has not shown that PETPLAN denotes any other entity. I regard 'petplans' to be highly similar to PETPLAN and consider that Internet users are likely to regard the additional 's' as merely denoting the plural form of the Complainant's mark. The Respondent points out that the Complainant is not the owner of petplans.com, petplans.net, petplans.org and petplans.com.au. My own enquiries show that there is no business trading under or using 'petplans' at any of these sites: petplans.com does not resolve to an active web site; petplans.net resolves to a page which says the domain name is for sale; petplans.org is not registered; and petplans.com.au is being used for sponsored links, including for pet insurance. In my view Internet users are likely to associate or connect the Domain Name with the Complainant. This tends to suggest, given my finding on the Respondent's knowledge at paragraph 6.22, that the Respondent acquired the Domain Name with the Complainant in mind.
- 6.25 However, the Respondent suggests (although not in clear terms) that it acquired the Domain Name as part of a portfolio of generic and descriptive domain names. The Respondent has not provided any evidence of such a portfolio or of the nature of these generic and descriptive names. On the contrary, the only evidence of the other domain names which the Respondent owns relates to names which are not generic or descriptive: porsche, isuzuhoddesdon and elton john. The Respondent seems to suggest that its interest in 'porsche' is as a first and surname. I am sceptical of this suggestion given that 'porsche' is a very famous name for cars and is not generally known as a first or second name. This leads me to approach the Respondent's limited explanation for acquiring the Domain Name with a degree of caution.

- 6.26 Nevertheless, in my view, there is some scope for 'petplans' to be used in an obviously descriptive manner without targeting or being directed at the Complainant. 'petplans' is a combination of dictionary words which on their own are in common use but together are not a common expression and which is potentially descriptive of plans for a pet.
- 6.27 Indeed, the Respondent argues that there is not only one possible application for the term 'petplan(s)' as relating to the Complainant's insurance business. The Respondent relies on various web sites which it states are unrelated to the Complainant yet freely use the term Pet Plan(s). I have considered the content of these web sites as follows:
- (a) vets4pets.com/healthy-pet-special-offers/complete-care/
- This is the site of Vets4Pets and relates to Complete Care health plans for pets. It uses 'HealthPlans4Pets' and has a link for Petplan Insurance. The site says that Vets4Pets work in partnership with and recommend Petplan, the UK's No. 1 pet insurance provider. I understand this to be the site which is authorised by the Complainant to use the PETPLAN mark.
- (b) preventplans.net/plans/
- This is the site of Prevent Plans based in the US. It relates to Preventative Wellness Plans. Available plans include "Wellpet Plans". Under "Prevent Plan Offerings" there is a reference to "Veterinary Well Pet Plans" (see paragraph 5.5(h)(ii)).
- (c) <http://www.walkjogrun.net/training/dog/training-plans.cfm>
- This relates to WalkDogRun Dog Training Plans. There is no reference to 'petplans'.
- 6.28 In my view this evidence supports that 'petplans' is not referable to another business and is not in common use as a combination of ordinary words or as a descriptive term.
- 6.29 So why did the Respondent acquire the Domain Name? The crux of this matter is whether the purchase was with the Complainant in mind and with abusive intent or because of the potentially descriptive nature, in a certain context, of the Domain Name.
- 6.30 What does the Respondent have to say about the purpose for which it acquired the Domain Name? Aside from saying that it registers generic and descriptive names the Respondent is silent on why it acquired the Domain Name. The Respondent has not explained the circumstances or background to the purchase of the Domain Name or its plans or intentions for the Domain Name. This lack of candour in relation to the purpose for which the Domain Name was acquired tends to suggest that the Respondent had the Complainant in mind and that the Domain Name was registered with abusive intent.
- 6.31 This is a more finely balanced decision than DRS0658 chivasbrothers.co.uk and DRS0956 kodapost.co.uk. However, having weighed the factors discussed above, I consider that, on the balance of probabilities, the Respondent acquired the Domain Name for an abusive purpose being one or more of the purposes set out in paragraph 3(a)(i) of the Policy or for some other abusive purpose.
- 6.32 The Complainant also relies on paragraph 3(a)(iii) of the Policy namely that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known

names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern.

- 6.33 The domain names porsche.org.uk and eltonjohn.org.uk were registered at around the same time on 19 and 22 September 2008. They correspond respectively to a famous car brand name and a famous individual. The domain names isuzuhoddesdon.co.uk and isuzu-hoddesdon.co.uk were registered on 21 December 2010 and are said by the Respondent to be registered on behalf of a client, Isuzu Hoddesdon Limited. The Respondent says it purchased the Domain Name in November 2012.
- 6.34 Taking the above into account, I do not consider that the Domain Name is part of a pattern of registrations as asserted by the Complainant.

7. Decision

- 7.1 I find that the Complainant has Rights in a name or mark which is similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 I therefore direct that the Domain Name be transferred to the Complainant.

Patricia Jones

22 May 2015