

DISPUTE RESOLUTION SERVICE

D00016254

Decision of Independent Expert

Everite Windows Ltd.

and

B.VINCENT DECORATORS

1. The Parties:

Lead Complainant: Everite Windows Ltd.
Everite House, Carr Lane Ind. Est.
Hoylake
Wirral
Merseyside
CH47 4BG
United Kingdom

Complainant: Everite Windows Ltd.
Everite House, Carr Lane Ind. Est.
Hoylake
Wirral
Merseyside
CH47 4BG
United Kingdom

Respondent: B.VINCENT DECORATORS
15 GARDEN HEY ROAD
MEOLS
Wirral
CH47 5AS
United Kingdom

2. The Domain Name:

everitewindows.co.uk

3. Procedural History:

The Expert confirms that he is independent of each of the parties. To the best of his 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 a such a nature as to call in to question his independence in the eyes of one or both of the parties.

14 July 2015 11:51 Dispute received
14 July 2015 12:34 Complaint validated
14 July 2015 13:42 Notification of complaint sent to parties
31 July 2015 02:30 Response reminder sent
04 August 2015 10:09 Response received
04 August 2015 10:10 Notification of response sent to parties
07 August 2015 02:30 Reply reminder sent
12 August 2015 12:38 No reply received
12 August 2015 12:38 Mediator appointed
17 August 2015 09:45 Mediation started
18 August 2015 12:17 Mediation failed
18 August 2015 12:18 Close of mediation documents sent
20 August 2015 09:39 Expert decision payment received

4. Factual Background

The Respondent established a business under the trading name Everite Windows in 2000. He registered the Domain Name on 19 July 2000 for the purposes of his business.

The Respondent agreed to go into business with two other individuals in 2002 and together they formed a limited company, which is the Complainant in this case. The Complainant is a manufacturer and installer of uPVC windows, doors and conservatories.

The Respondent was a director of the Complainant from incorporation until he was removed from the board of directors in 2013. He still owns some shares in the company. Following his removal, the Respondent set up a business, Hilbre Windows, which operates in competition with the Complainant.

The Complainant used the Domain Name for the purposes of its business, although it has remained registered throughout in the Respondent's name. Following the Respondent's removal as a director, the Domain Name has been used by the Respondent in ways which, the Complainant says, are abusive within the meaning of the DRS Policy. The Respondent disputes this and says his use of the Domain Name has been legitimate.

5. Parties' Contentions

For the purposes of this section, the Expert has summarised the contentions of the parties insofar as they are relevant to the issues that fall to be determined under

the DRS Policy. At this stage, the Expert is making no findings of fact or passing any comment in relation to the contentions summarised below. The discussions and findings in relation to the evidence appear in section 6 below.

5.1 Complainant

The Complaint, so far as is material, is summarised below.

Rights

Brain Vincent, the Respondent, started a business under the name Everite Windows in 2000. The business became a limited company when the Complainant was incorporated on 4 April 2002. Upon incorporation, the directors were the Respondent, Roy Griffiths and Steve Bolton.

The Complainant is a manufacturer and installer of uPVC windows, doors and conservatories. The company is based in Hoylake, Wirral and supplies the building trade and the public. The Complainant has only ever traded under the name Everite Windows.

The Complainant is held in high regard within the local community. It sponsors local sports clubs, including a bowling and football club, and it supports local initiatives, such as a park activity trail.

The Complainant's trading name of Everite Windows is used on its letterheads, business cards, compliments slips and marketing literature. The trading name is displayed at the company's showrooms and the factory is named Everite House. The company's vans are all sign written with the company logo. The main website address is www.everitewindows.co.uk.

The Complainant is well known within the Wirral area as a result of the quality of its products and services. The Complainant has, since 2008, received numerous awards from Wirral Trading Standards for excellence in customer service. It was awarded the Trader of the Year award in 2010. The Complainant has been a registered member of FENSA since 2002 and is a member of the Double Glazing & Conservatory Quality Assurance Ombudsman Scheme.

The Complainant has always had high rankings on Google search results against the search terms 'Windows Wirral', 'Doors Wirral' and 'Conservatories Wirral'.

The Complainant's main hosting site is the Domain Name. Whilst the Complainant also owns <everitewindows.com>, this domain name has always been forwarded to the Domain Name.

Abusive Registration

The Respondent has no claim over the Everite Windows name, logo or the Domain Name as he was voted off the board of directors of the Complainant on 18 December 2013. He lost all rights to the name Everite Windows at that point. The Respondent has been able to take control of the Domain Name and has used it in ways which amount to abuse within the meaning of the DRS Policy.

In 2007 Mr Scudder of the Complainant took over the running of the web site and both the .co.uk and .com domain names. Mr Scudder changed the log in details for the Domain Name so that only he could gain access. Mr Scudder was unaware that the Domain Name had been registered to the Respondent's old email address as this did not show up on the domain control panel. Mr Scudder was also unaware that the Respondent was able to bypass the Fasthost log in by going to Nominet using his old email address.

Paragraph 3aiC – unfair disruption

Following his removal as a director of the Complainant, the Respondent moved the Domain Name to his own hosting site. He directed the Domain Name to a web site at <hilbrowindows.co.uk>. The Complainant believes that this was done in order to drive internet traffic to the Respondent's business, Hilbre Windows, which is a direct competitor of the Complainant. This is to the detriment of the Complainant both in the short and long term and clearly shows that he has been disrupting the Complainant's business.

Paragraph 3aii – confusion or likelihood thereof

The Complainant has had an online presence as Everite Windows for over 10 years by using the Domain Name. Anyone carrying out a search for 'Windows Wirral', 'Doors Wirral' and 'Conservatories Wirral' will no longer see the Complainant's name whereas it was previously ranked in the top five. Hilbre Windows now appears where the Complainant used to sit.

By diverting internet traffic to his own website <hilbrowindows.co.uk>, the Respondent, as a direct competitor and an ex-director of the Complainant, is knowingly deceiving the Complainant's customers into thinking that Everite Windows is a part of Hilbre Windows.

In an effort to get its internet presence back the Complainant has started the process of building a new web site hosted at <everitewindows.com> but, in the meantime, anyone who searches for <everitewindows.co.uk> is taken to what looks like the Complainant's domain address but, when they click on it, they are redirected to Hilbre Windows' web page.

Paragraph 3av – relationship between the Complainant and Respondent

The Respondent registered the Domain Name in the name of BV Decorators prior to the Complainant being incorporated in 2002. However, since 2002 the Complainant has been using the Domain Name exclusively. Since its incorporation, the Company has always paid for the renewal of the Domain Name.

The Complainant seeks a transfer of the Domain Name.

5.2 Respondent

The Response, so far as is material, is summarised below.

The Complainant does not have a trade mark for Everite Windows and bears no such mark on the products they sell so they do not qualify for trade mark protection.

The Respondent is wholly justified in retaining the Domain Name as he was the original registrant, the legal owner and registered keeper.

The name Everite was created after a dear friend, with whom the Respondent was going to open a window company, tragically passed away. As a result, Everite has deep roots in the Respondent's family and means a great deal to them.

In 2000 the Respondent and his wife opened Everite Windows. They decided to emphasise that it was a family run business as the Respondent, his wife and their families are extremely well respected, having lived in their village for over 45 years, and are held in high regard for their honesty and loyalty within the local community. The Domain Name was registered by the Respondent as a sole trader to encompass any decorating, building and windows and door trading carried out as a family.

In 2002 the Respondent was approached by Steven Bolton and Roy Griffiths, two businessmen who were, and still are, in the property rental business, namely GB Developments. They asked the Respondent if he would like to go into business with them. At first, the Respondent refused having been warned about their unscrupulous business behaviour by several friends and local businessmen. After much persuasion the Respondent agreed.

They set up a separate company called Everite Windows Limited and the Respondent was to be the managing director. At no point did the Respondent offer to let them have his Domain Name as part of any deal but only to trade alongside it and never to have it outright. In fact, it was made very clear that the Domain Name had to stay with the Respondent's family.

The statement in the Complaint that Mr Scudder has been running the web site since 2007 is wrong. Mr Scudder was working for the Respondent who was the managing director and so Mr Scudder was only running it on the Respondent's instructions.

In 2007 the Respondent was asked about transferring ownership of the Domain Name to the Complainant. The Respondent said it was not an option because, as agreed in 2002, it meant too much to him personally. At this point, the Complainant registered <everitewindows.com> and it was agreed that the vans would be sign written with the .com domain name. From this moment on the Complainant effectively stopped using the Domain Name as its primary domain name and moved over to .com domain name. Company emails do not run through the Domain Name.

The Respondent was the managing director and general manager of the Complainant from 2002 to 2013. The manner in which Steven Bolton, Roy Griffins and Mark Scudder wanted to run the business was unscrupulous and morally unacceptable. After bitter disagreements about the future direction and tactics of the business, the Respondent was voted off the board of directors.

The Respondent and his wife are still the largest shareholders and would like the company to remain successful as they have a vested interest in the company and would like to receive dividends. The Respondent would certainly not do anything to compromise that.

The Respondent says that the remaining directors have continued to act in a way which causes him great concern. The Respondent says that two of the directors of the Complainant have had a good few of their joint ventures go into an insolvency process over the years. He says it is his strong belief that they will make this happen again to the Complainant.

On 4 September 2014 the remaining directors incorporated a second company called Everite Windows Doors & Conservatories Limited (company number 09203036). The Respondent is concerned that the assets of the Complainant may be transferred to the new company and the Complainant will then be put into liquidation. He also points out that the Complainant would then not have a need for the Domain Name.

The Respondent says that a great number of people to this day still think he is the managing director of the Complainant and it is well known locally that customers came to be looked after by him and no-one else. He says that if the company goes into liquidation this would not only have a direct impact on him and his wife, as the largest shareholders, but it would harm the reputation of his family in the local community.

The Respondent says that he is merely protecting his “original domain name” and he does not want his name, or the memory of his late friend, tarnished by the actions of the other directors of the Complainant.

The Respondent says that the story of how he came up with the name Everite Windows is an emotional one and one of great personal meaning. He feels that people would get a great deal of pleasure and enjoyment out of hearing about his story and his journey through business over the last 15 years. The Respondent has, after years of encouragement from his family and customers, decided to write a book about his journey and experiences. He feels that nothing would be more fitting than to use the Domain Name as the starting point for the book. He has been in talks with a publishing company, Grosvenor House Publishing, since January 2015. The publishing company advised him to make sure that he had control of his Domain Name and to have a ‘Coming Soon’ page for the book in order to generate interest.

The Respondent accepts that, immediately after he gained access to the Domain Name, he had it forwarded to his current company’s web site as he had nowhere else to put it and he did not have an IT company to guide him. He expresses great regret and accepts it was a mistake for which he offers an apology.

He says it was only for a seven day period and, as soon as he had a ‘Coming Soon’ page, the Domain Name was directed to that page rather than to his other web site. He says it will never happen again.

The Respondent also says he has been advised that it would be good practice to have a link to <everitewindows.com> on the 'Coming Soon' page so as not to misdirect anyone. He says he is happy to make adjustments to this link, if required.

The Respondent says he simply wishes to be able to use his domain name in a legitimate and relevant way, furthering his own personal achievement and hopefully bring some joy to other people.

6. Discussions and Findings

In order for the Complainant to succeed it must prove to the Expert, on the balance of probabilities, that:

“it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

the Domain Name, in the hands of the Respondent, is an Abusive Registration.”

The meaning of “Rights” is defined in the Policy in the following terms:

“Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”

An Abusive Registration is defined in the Policy as follows:

“Abusive Registration means a Domain Name which either:

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

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.”

A non-exhaustive list of factors which may be evidence of an Abusive Registration is set out in paragraph 3 of the Policy. 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 of the Policy.

Complainant's Rights

The Respondent points out that the Complainant does not have a trade mark for Everite Windows and, as it bears no such mark on its products, it does not qualify for trade mark protection. To the extent that the Respondent's comments are directed at registered rights, he is correct in his observation that the Complainant

does not have a trade mark. However, the definition of rights in the Policy is not restricted to registered rights.

The Complaint is made on the basis that the Complainant has acquired unregistered rights in the name Everite Windows through its trading activities since 2002. The Respondent does not seek to deny the use by the Complainant of that trading name and it would be disingenuous for him to attempt to do so. He was one of the founding directors of the Complainant. On his own case, he was the managing director and had an active involvement in the business until his forced removal in 2013. The Respondent says the use made by the Complainant of the Domain Name was at his instruction as its managing director.

It is clear, on the evidence that has been submitted, that the Complainant has acquired a reputation and goodwill in the name Everite Windows. The name Everite Windows has been used over an extended period to denote the goods and services of the Complainant. The name appears in press advertisements as well as on sponsorship deals, quality accreditations and business awards. The fact that the goodwill appears to be mainly centred around one geographical area matters not for these purposes. The Complainant has enforceable rights in its trading name.

The Expert is satisfied that the Complainant has rights in the name Everite Windows which, for these purposes, is identical or similar to the Domain Name. The Complainant has therefore satisfied the Rights test.

Abusive Registration

The Complainant seeks to rely upon a number of factors from the non-exhaustive list in paragraph 3 of the Policy which can amount to evidence of abuse. This list is however only a 'guide' and, as the Experts' Overview makes clear, Experts have a broad discretion when it comes to determining whether there has been an Abusive Registration. Abuse can take place either at the date of acquisition of the Domain Name or subsequently through use of it. The Complainant raises both forms of abuse.

Paragraph 3aiC - unfair disruption

The Complaint's case under paragraph 3aiC is misconceived as this paragraph is concerned with the Respondent's motivation at the time of acquisition of the Domain Name. The Expert rejects the contention that the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant. The Complainant's business did not exist at the date of registration.

The evidence is that the Respondent registered the Domain Name in connection with a business that he set up in 2000. It was not until two years later that the Complainant was incorporated at Companies House and it started to trade using that name.

Paragraph 3av – relationship between the parties

The Complainant's case under this paragraph is also misconceived. To succeed under this paragraph, it must be shown that the Domain Name was registered as the result of a relationship between the Complainant and the Respondent and two other conditions must also be satisfied. There was no such relationship in 2000 when the Domain Name was registered.

This case is not about the Respondent's motivation in 2000 when he registered the Domain Name. It is all about the use made by the Respondent of the Domain Name following his removal as a director of the Complainant in 2013.

Likelihood of confusion – paragraph 3a ii

It is common ground that the Respondent registered the Domain Name in 2000 in his capacity as a sole trader. It is also common ground that, following its incorporation in 2002, the Domain Name was used by the Complainant for the purposes of its business. The Domain Name was directed to the company's website. The Respondent says that the Complainant stopped using the Domain Name as its primary domain name in 2007 and moved over to the .com domain name. The Complainant says that it used the Domain Name as its main hosting site throughout. It is not necessary to determine this particular point in order to arrive at a decision in this case. What matters is that the Complainant used the Domain Name for the purposes of its business and it was not used for any other purpose until after the Respondent was removed as a board director.

The Complainant says that, following the Respondent's removal as a director, he set up a business in direct competition with the Complainant. It says that the business trades as Hilbre Windows and its website is at www.hilbrewindows.co.uk. The Respondent does not seek to dispute these contentions. Indeed, he accepts that he directed the Domain Name to his 'current company's website.' He says it was only for the period of seven days and it happened because he did not have anywhere else to put it and, at that stage, he had not obtained advice. He describes it as a mistake which he says he regrets and the Response includes an apology.

In addition to the position that emerges from the written submissions of the parties, the Complainant has produced evidence in the form of two Google searches, carried out on 13 July 2015, which show the following results:

Search against 'everite windows'

The first result shown is the Complainant's 'official' web site at <everitewindows.com>. The second result shown is the Domain Name. This also appears to be an 'official' web site of the Complainant as below the hyperlink and URL there is the following text:

'Everite Windows Ltd supply and fit high quality doors, windows and conservatories at realistic prices to the Wirral and the northwest.'

The hyperlink from this search result takes an internet visitor directly to the Hilbre Windows' web site at <hilbrewindows.co.uk>.

Search against 'everitewindows.co.uk'

Not surprisingly, the first result returned on this search is the Domain Name itself. Immediately above the URL of the Domain Name is a hyperlink with the following text:

'Homepage – Hilbre Windows – uPVC Windows and Doors'

The address of Hilbre Windows is set out below the URL which is in the Wirral, where the Complainant is based and its goodwill is centred.

Paragraph 3a(ii) of the Policy reads as follows:

'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.'

The Experts' Overview confirms that the 'confusion' being referred to is confusion as to the identity of the person/entity behind the domain name. This is sometimes framed as a question - is it likely that internet users seeing the Domain Name will believe that it is registered to, operated or authorised by, or otherwise connected with the Complainant?

The Complainant puts its case on this ground in the following way:

'By diverting our website traffic to his own website (hilbrewindows.co.uk) Mr Brian Vincent, as a direct competitor of Everite Windows and an ex-Director of Everite Windows, is knowingly deceiving our customers into thinking that Everite Windows is a part of Hilbre Windows.'

This is a somewhat unusual case. Most cases decided under paragraph 3a(ii) relate either to (i) a reseller of a trade mark owner's goods who does not have the owner's consent but falsely implies, through the use of a domain name, that there is some form of official connection or (ii) a competitor business which registers and uses a domain name that is close to a complainant's trade name in the hope of benefitting from some confusion.

In this case, the Domain Name was actually operated for many years by the Complainant and there was no risk of confusion. It would not have been apparent to an internet visitor that the Domain Name was actually registered to the Respondent and that would not have been of any particular interest to someone who was looking online for the Complainant.

The Respondent then changed the use of the Domain Name to direct it to his new (and competing) business. He says this only happened for a period of seven days, although there is no evidence of how long this use persisted. Whilst there is no evidence of any actual confusion, the Expert is of the view that it is highly likely that internet users seeing the Domain Name would believe it was connected to the Complainant. A search (referred to above) against the words 'everite windows' returned the Domain Name as the second result. The text displayed below the

Domain Name makes express reference to the Complainant's corporate name. There is certainly enough evidence to conclude that, in relation to use during this period, there is a strong case to answer of abuse within paragraph 3a(ii) and the onus therefore falls on the Respondent to show why the Domain Name is not an Abusive Registration.

In addition to seeking to be excused for the use during this period, the Respondent raises a number of points that he wishes to be considered which he says show that this is not a case of abuse.

The Respondent as registrant

The Respondent says he is wholly justified in retaining the Domain Name on the basis:

'I was the original registrant, the legal owner and registered keeper of it.'

The fact that someone has registered a domain name cannot of itself be an answer to a complaint. The DRS Policy is predicated on the basis that there is a dispute about whether a registrant is entitled to retain the domain name in dispute. It is a specious argument for a Respondent to say: 'I am entitled to retain the domain name because I registered it.'

Goodwill attaching to the name

The Respondent appears to believe that he owns the name Everite Windows as he came up with it and he registered the Domain Name, which incorporates it. It is well established in law that there is no property in a name as such but there is property in the goodwill that is attached to a name. The Respondent may or may not have generated goodwill in the name Everite Windows during the period that he operated as a sole trader. There is simply no evidence on that point before the Expert. What is clear is that, following its incorporation in 2002, the Complainant created goodwill in that name through its trading activities and that the Respondent played an active role in those activities.

The Respondent is fully entitled, following his departure from the Complainant, to set up in direct competition. What he is not entitled to do is suggest to customers, via a domain name or otherwise, that his new business is connected to the business that he has left. The fact that some people may still think the Respondent is the managing director of the Complainant is not a relevant factor. The goodwill attaches to the business and not to the managing director.

Notwithstanding his close association with the name Everite Windows, initially as a sole trader in the period from 2000 to 2002 and, subsequently, as the managing director of the Complainant in the period from 2002 to 2013, the Respondent has no more right to use the trading name Everite Windows for the purposes of a competing business than a complete stranger. There is no defence in the law of intellectual property of a name which has 'special significance.'

It is conceivable that, as a matter of agreement between the parties, the Respondent was entitled, as against the Complainant, to retain the Domain Name.

This would depend partly on what was agreed in 2002, when the sole trading business became a limited company, and in 2007, when the issue was apparently discussed again. The Expert cannot determine this point under the auspices of the DRS Policy and he does not need to do so.

Even if the Respondent was so entitled, it does not follow that he can use the Domain Name in any way he sees fit without it being open to challenge under the DRS Policy. In effect, he has conceded this point by accepting that his decision to direct the Domain Name to the web site of a competitor was a mistake. He argues that directing it at a 'Coming Soon' web page is however a legitimate use.

Use in a legitimate way

The Respondent's case as to legitimate use appears to be built on the fact that the name Everite Windows has a special significance for him. This is because he says the name, in the minds of his family, is associated with his late friend. It is also because some of the public still believe he is connected with the Complainant's business. He seeks to justify his use of the Domain Name, in part, as a means of protecting his personal reputation and the memory of his late friend. He is critical of the direction of the Complainant's business since his departure but that is not a matter for the Expert.

The Respondent also says that he decided to write a book about his business journey and experiences. He refers to talks with a publishing company which have been taking place since January 2015. He says it is his intention, supported apparently by advice from the publishing company, to use the Domain Name in order to generate interest for the book. This is said to be the justification for what is described as the 'Coming Soon' web page to which the Domain Name is currently directed.

As the Experts' Overview points out, Experts will generally view purported 'plans' which are totally unsupported by any contemporaneous evidence with a heavy measure of scepticism. The Respondent has not produced any evidence of the talks he says he has had with a publishing company since January 2015.

In addition to a lack of evidence, the Respondent's case in relation to the current use of the Domain Name is undermined by the fact that there are three separate references on the 'Coming Soon' web page to Hilbre Windows and a hyperlink to its web site.

The 'Coming Soon' web page contains the following text:

'Life Through A Window
....the story of Everite Windows'

'This website will tell the inspiring story of Brian Vincent and his tough journey to becoming a leader in his field.
From starting Everite Windows from the ground up through to Hilbre Windows, a windows company to be proud of!
Website coming soon - August 2015

In the mean time you may wish to view Hilbre Windows for genuine quality and service - [Click Here](#)
The original Everite Windows Limited can also be found here'

Whilst there is also a hyperlink to the Complainant's web site, the statement immediately above it that 'you may wish to view Hilbre Windows for genuine quality and service' implies, by way of contrast, that there could be some doubt about the Complainant's quality and service.

Having weighed up all of the evidence, the Expert does not accept the Respondent's contention that the current use of the Domain Name is legitimate or that it provides an adequate answer to the strong case, made out by the Complainant, of abuse. There was no reason to use the Domain Name (which had been used by the Complainant for many years) to generate interest in a book about the Respondent's business journey. There was no reason to include a hyperlink to the Hilbre Windows' web site if the intention was simply to generate interest in such a book. There is no evidence at all of any 'talks' with a publishing company about that book.

The Expert's view is that the Respondent was hoping that an internet visitor, who was searching for the goods and services of the Complainant, would wrongly assume that the Domain Name was connected to the Complainant. This would then potentially lead that visitor to the 'Coming Soon' page. This amounts to initial interest confusion which can form the basis of a finding of abuse. Once the internet visitor has 'landed' on the 'Coming Soon' web page it is likely they would quickly realise that there was no particular connection between the Complainant and Hilbre Windows, other than that the Respondent was behind both ventures. However, the fact remains that the internet visitor has only arrived at the web page in the first place as a result of the confusion.

The web page then seeks to rather slyly imply that the Respondent's new business venture offers genuine quality and service whereas his previous outfit does not. The Respondent then invites the visitor, by way of a hyperlink, to visit the Hilbre Windows' web site.

The Expert finds that this is a case of Abusive Registration on the following grounds:

- The use of the Domain Name for a limited period by directing it to the Hilbre Windows' web site falls within paragraph 3a(ii) of the Policy. The Respondent was deliberately trying to divert customers who go to the Domain Name (either directly or via a search engine) to his new business. The fact that the first search result referred to above refers to the Complainant's corporate name would give false comfort to anyone who might arrive at the web site of the new business and wonder whether there was a connection to the Complainant.
- The use of the Domain Name thereafter by directing it to the 'Coming Soon' web site seeks to take advantage of initial interest confusion, which falls within paragraph 3a(ii) of the Policy. It seeks to unfairly exploit the goodwill that attaches to the Complainant's trading name to lure an

internet visitor to the web page even if they then quickly realise there is no connection to the Complainant.

- The wording on the 'Coming Soon' web site can only have one purpose and that is not to generate interest in a book. It was carefully worded to encourage those who may have an interest in doors, windows and conservatories to form the impression that Hilbre Windows offers better quality and service than the Complainant does. That may or may not be true but it entirely undermines the Respondent's case that the Domain Name is being used to generate interest in a book. That case is further undermined by the lack of any evidence about the forthcoming book. The Respondent's answer to a strong case of abuse, advanced by the Complainant, is not at all convincing.

7. Decision

For the reasons set out above, the Expert is satisfied on the balance of probabilities that the Complainant has rights in a name which is identical or similar to the Domain Name and the Domain Name is, in the hands of the Respondent, an Abusive Registration. The Expert directs that the Domain Name is transferred to the Complainant.

Signed: Andrew Clinton

Dated 16 September 2015