

DISPUTE RESOLUTION SERVICE

D00017243

Decision of Independent Expert

(Summary Decision)

Laser Level Limited

and

Better Web Design

1. The Parties:

Complainant: Laser Level Limited
6B Lanark Road
Maida Vale
London
London
W9 1DA
United Kingdom

Respondent: Better Web Design
Suite 400 Wey House
15 Church Street
Weybridge
Surrey
KT13 8NA

United Kingdom

2. The Domain Name:

laserlevel.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 laserlevel.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)

A 1999 agreement between the Complainant and the Respondent's 'associate' company UKC is referred to in terms of which it is stated that the Respondent would acquire the Domain Name for use on a website to be populated by the Claimant, but created by UKC. The Complainant states that it set up a registered company Laser Level Limited and various email addresses using the words laser level in 2000. There was some marketing of the website using the Domain Name via Google Adwords. The Domain Name is highly descriptive, as the Complainant appears to sell laser levelling and measuring instruments. The Complainant seems to rely on UKC withdrawing the website at the expiry of the contract in 2008 and its reuse of the Domain Name for a new website promoting roofing construction, which the Complainant says has not yet been launched. Otherwise the Complaint did not contain any evidence of an Abusive Registration. A Chairman's Letter was sent which did not result in any further information being supplied. Despite that, and although not obliged to do so, and it is not guaranteed that other experts would take the same view, I was prepared to make a paragraph 13a request for certain further documents. A file was provided and the Respondent was given a chance to respond but did not do so. The file contents tend to confirm that the Complainant agreed that the Respondent (or its associate UKC) owned the Domain Name and the website, the level of any sales made was very low and that the business was failing in 2006. However the threshold to establish Rights is a low one and the Expert is prepared to give the Complainant the benefit of the doubt here, despite the descriptive nature of the Domain Name. However there is insufficient evidence supplied of an 'Abusive Registration.' Paragraph 4.9 of the Nominet Experts' Overview deals with when use of a purely generic of descriptive term can be abusive. It refers to DRS 04884 (maestro.co.uk) where the Appeal Panel observed "*where a domain name is a single, ordinary, English word, the meaning of which has not been displaced by an overwhelming secondary meaning, the evidence of abuse will have to be very persuasive if it is held to be an Abusive Registration under the DRS Policy.*" In all the circumstances, I have decided that there is no Abusive Registration and to refuse transfer.

8. Decision

I grant the Complainant's application for a summary decision. In accordance with paragraph 5f of the Procedure, the domain name will therefore be transferred to the Complainant.

or

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

(Please delete as appropriate)

Signed: ^{Unsigned} G Grassie

Dated: 16/05/16