



**NOMINET**

## **Dispute Resolution Service**

**D00017689**

Jaguar Land Rover Limited

and

Motor-People Limited

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## **Decision of Independent Expert**

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### **1 Parties**

Complainant: Jaguar Land Rover Limited

Address: Abbey Road,  
Whitley,  
Coventry

Postcode: CV3 4LF

Country: United Kingdom

Respondent: Motor-People Limited

Address: 22 The Stennings  
East Grinstead

Postcode: RH19 1PF

Country: United Kingdom

## **2 Domain names**

<welovejaguar.co.uk>  
<welovelandrover.co.uk>

## **3 Procedural History**

- 3.1 On 6 July 2016 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy (“the Policy”) and DRS Procedure (“the Procedure”). Nominet notified the respondent on the same day. The respondent’s response was received on 22 July 2016, and the complainant’s reply on 28 July 2016. The dispute was not settled in mediation. The complainant requested referral of the matter for expert decision under the Procedure, and on 22 September 2016 paid the applicable fee.
- 3.2 I was appointed as expert on 7 October 2016. I have made the necessary declaration of impartiality and independence, confirming that I am independent of each of the parties and that 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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

## **4 Factual background**

- 4.1 The complainant is a well-known car manufacturer. The domain name was registered by the respondent on 1 November 2012.

## **5 Parties’ Contentions**

### *Complainant*

- 5.1 The complainant says it owns trade marks for LAND ROVER and JAGUAR.
- 5.2 The complainant says the dominant and distinctive element of both domain names is one of its trade marks. It says that the remaining words are descriptive and non-distinctive terms “we”, “love” and the domain suffix “.co.uk”. The term “we love” does not, it says, add any distinctive elements to the domain names.
- 5.3 According to the complainant, the respondent hosts its main website at the domain <motor-people.co.uk> and claims to be a specialist automotive services provider.
- 5.4 It argues that the respondent is using the domain names to host commercial websites offering services for purchasing JAGUAR and LAND ROVER branded vehicles from third parties.
- 5.5 The complainant says the respondent is not an authorised dealer of the

complainant's vehicles and has no authorisation to use its trade marks.

- 5.6 It argues that this use of the trade marks is misleading to consumers as it is likely to lead consumers to associate the websites hosted at the domain names with the complainant. That remains the case, it says, even if the respondent has removed the complainant's trade marks from its websites.
- 5.7 The respondent is taking unfair advantage of the complainant's trade marks, argues the complainant, directing traffic to the respondent's website based on the reputation the complainant has built up in its brands. The only reason to use the trade marks in the domain names, it says, is to trade off that reputation.
- 5.8 The complainant says the respondent is engaged in a pattern of registrations where it is the registrant of domain names corresponding to well known vehicle names or marks in which it has no apparent rights, and the domain names are part of that pattern.
- 5.9 According to the complainant, there is no indication on the respondent's website that its business is independent of the complainant and unconnected to it.
- 5.10 The fact that the respondent is not deliberately causing confusion is irrelevant, the complainant says.
- 5.11 The complainant says the respondent has offered to sell it the domain names, which it argues is another indication that the domain names have been registered abusively.

*Respondent*

- 5.12 The respondent says that it has removed the complainant's trade marks from the websites connected to the domain names.
- 5.13 It says they are part of a set of websites that it purchased in order to buy cars. It says nothing detrimental to the complainant has ever been written on them, nor has any other manufacturer asked for anything to be done about the other domains it owns.
- 5.14 It says it has not used the complainant's trade marks to imply that it has anything to do with the manufacturer, but purely to help customers obtain a good price for their cars.
- 5.15 The respondent says it has offered to sell the domain names to the complainant, as it had to buy them itself. It says it is still willing to sell them to the complainant, but implies that it should not have to give them away.

## 6 Discussion and Findings

### *General*

6.1 Under paragraph 2(a) of the Policy a complainant must show 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 that
- the domain name, in the hands of the respondent, is an abusive registration.

### *Rights*

6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.

6.3 The complainant has produced documentary evidence from the UK Intellectual Property Office of its UK and European trade marks in respect of the marks JAGUAR and LAND ROVER. At the third level (i.e. disregarding “.co.uk”) the domain names each include one of the marks, and in each case the string of characters corresponding to the mark represents the dominant element of the domain name.

6.4 In my view the addition in each domain name of the string “welove” does not make it dissimilar to the complainant's marks. On the contrary, by creating strings that read like sentences in each of which one of the complainant's trade marks functions as direct object, those additional letters naturally lead the reader to infer a reference to the complainant's products and therefore reinforce the similarity.

6.5 In those circumstances, I am satisfied that the complainant has rights in respect of names or marks similar to the domain names.

### *Abusive registration*

6.6 Under paragraph 1 of the Policy, 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.

This definition obviously covers both the time of registration, and later use.

6.7 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the

respondent is using a domain name in a way which has confused or is likely to confuse people into believing it is connected with the complainant may be evidence of abusive registration.

- 6.8 Given that the domain names include the complainant's marks, and given that business being carried on via the domain names relates to the complainant's products, in my view some confusion is likely between the domain names and the complainant.
- 6.9 The appeal panel in *Toshiba Corporation v Power Battery Inc* (DRS 07991, <*toshiba-laptop-battery.co.uk*>) analysed the principles to be applied when assessing the legitimacy of a reseller's incorporation, within a domain, of the complainant's trade mark. Whether or not the respondent resells the complainant's products, on the evidence before me it trades in them in that it offers to buy them. In my view therefore, the same principles may be applied.
- 6.10 The *Toshiba* appeal panel summarised the applicable principles as follows:
1. It is not automatically unfair ... to incorporate a trade mark into a domain name and the question of abusive registration will depend on the facts of each particular case.
  2. A registration will be abusive if the effect of the respondent's use of the domain name is falsely to imply a commercial connection with the complainant.
  3. Such an implication may be the result of "initial interest confusion" and is not dictated only by the content of the website.
  4. Whether or not a commercial connection is implied, there may be other reasons why the reseller's incorporation of the domain name is unfair. One such reason is the offering of competitive goods on the respondent's website.
- 6.11 The appeal panel's decision in that case is not binding on me, but does have persuasive force.
- 6.12 I have already explained at paragraph 6.8 my view that some confusion is likely. Applying the second and third principles set out by the *Toshiba* appeal panel, this is suggestive of abusive registration.
- 6.13 In addition, applying the fourth *Toshiba* principle, in my view it is not fair for the respondent to use the domain names in this way. It appears from the evidence produced by the complainant that it has chosen to organise its online business, which involves offering to buy used cars, not by making a general offer to buy vehicles from one website but by establishing a series of dedicated websites each linked to a famous brand name. It has given no explanation of why it chose to organise its business in that way, but I infer that it saw advantage in trying to attract sellers to its business by using brand names, including the complainant's, and domains incorporating them. In my view that is, just as the complainant has argued, to trade off its reputation.
- 6.14 In my view therefore, the respondent appears in the circumstances to have used

the domain name in a manner which has taken unfair advantage of or has been unfairly detrimental to the complainant's rights.

- 6.15 Under paragraph 3(a)(iii) of the Policy, it may be evidence of abusive registration if the complainant can demonstrate that the respondent is engaged in a pattern of registrations corresponding to well known names or trade marks in which the respondent has no apparent rights, and the domain name in question is part of that pattern.
- 6.16 The complainant has produced evidence that the respondent registered on 1 November 2012 over a dozen domains corresponding in part to well-known vehicle trade marks, including the domain names.
- 6.17 It does therefore seem on the face of it that the respondent is engaged in a pattern of registrations corresponding to well known names or trade marks in which it has no apparent rights.
- 6.18 Paragraph 3.5 of the DRS Experts' Overview suggests experts have taken two approaches to the question whether any particular domain name forms part of such a pattern. On one approach —

*There must be evidence to justify the linking of the domain name in issue to the other objectionable domain names. The link may be found in the names themselves and/or in the dates of registration, for example.*

- 6.19 On the other approach—

*If the domain name in issue is a well-known name or mark of the Complainant and the Respondent is the proprietor of other domain names featuring the well-known names or marks of others, the pattern is likely to be established, even if there is no obvious link between the names or the manner or their dates of registration.*

- 6.20 In my view, on either approach the domain names appear to form part of the pattern.
- 6.21 Both domain names are linked to the other objectionable registrations because they all relate to famous vehicle marks. In addition they are linked by date, having been registered on 1 November 2012. The domain names feature well-known marks, as do the other registrations.
- 6.22 The respondent has given no explanation of the pattern of registrations it has been involved in.
- 6.23 In the circumstances I am satisfied on the balance of probabilities that the domain name, in the hands of the respondent, is an abusive registration.

## **7 Decision**

- 7.1 I find that the complainant has rights in names or marks which are similar to the domain names; and that the domain names, in the hands of the respondent, are abusive registrations.
- 7.2 The complaint is upheld. I direct that the domain names be transferred to the complainant.

Carl Gardner

1 November 2016