

DISPUTE RESOLUTION SERVICE

D00017827

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

Jaguar Land Rover Limited

and

M Fothergill

1. The Parties

Complainant: Jaguar Land Rover Limited
Abbey Road,
Whitley
Coventry
CV3 4LF
United Kingdom

Respondent: M Fothergill
High Farm
Harrogate
Unknown
HG3 2HR
United Kingdom

2. The Domain Name

bespokerangerovers.org.uk ('the Domain Name')

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 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)

The Complainant's case is essentially that the Domain Name is not much more than the name in which it has rights, that the addition of the word 'bespoke' makes little difference and that there are no conceivable circumstances in which use of the Domain Name would be legitimate. But the addition of the word 'bespoke' does make a difference and it is not self-evident that all use would render this an abusive registration (or that the registration was abusive at the point that the Domain Name was acquired).

Section 4.8 of the *Experts' Overview* considers situations in which a domain name incorporates the complainant's trade mark so that the registrant can sell the trade mark owner's goods – so-called 're-seller' cases. It refers to the generally accepted principles to be derived from expert decisions under the Dispute Resolution Service Policy, as reviewed by the appeal panel in *Toshiba Corporation v Power Battery Inc (DRS 07991)* <toshiba-laptop-battery.co.uk>. The first principle is:

It is not automatically unfair for a reseller to incorporate a trade mark into a domain name and the question of abusive registration will depend on the facts of each particular case.

As for the addition of 'bespoke', section 3.3 of the *Overview*, concerning confusing use, says

Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment (other than the generic domain suffix)...The further away the domain name is from the Complainant's name or mark, the less likely a finding of Abusive Registration.

So the Complainant here cannot rely on any unfairness arising automatically from the inclusion of its trade mark in the Domain Name and there is a judgement to be made about the effect of the addition of the word 'bespoke'. The onus remains on the Complainant to prove its case, on the balance of probabilities, and it has not done so.

8. Decision

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

Signed:

Dated: 20 September 2016