

# **DISPUTE RESOLUTION SERVICE**

**D00017858**

## **Decision of Independent Expert**

Billabong International Limited

and

Mr Maurice Connolly

### **1. The Parties:**

Complainant: Billabong International Limited  
1 Billabong Place  
Burleigh Heads  
Queensland  
4220  
Australia

Respondent: Mr Maurice Connolly  
Eagle House  
Cranleigh Close  
South Croydon  
Surrey  
CR2 9LH  
United Kingdom

### **2. The Domain Name:**

billabong.co.uk

### **3. Procedural History:**

On 16 August 2016, the dispute was received, validated on 18 August and notification of the complaint was sent to parties on the same day. On 7 September, a response reminder was sent and a response was received on 13 September and notification of the same was sent to both parties. On 16 September, a reply reminder was sent and a reply was received on 21 September and notification was sent to both parties.

On 26 September 2016 Nominet appointed a mediator and mediation started. On 11 October mediation failed and the close of mediation documents were sent to both parties. On 21

October, a full fee reminder was sent to the Complainant and the Expert decision payment was received the same day. The Expert, Tim Brown, was appointed on 04 November.

I 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 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**

The Complainant – Billabong International Limited – is a public company, limited by shares, incorporated in Australia. The Complainant operates several wholly owned subsidiaries, including GSM (Operations) Pty Limited and GSM (Trademarks) Pty Limited which hold a variety of trade marks for the group.

The Complainant's BILLABONG brand was founded in Australia in 1973 and is concerned with the marketing, distribution, wholesaling and retailing of apparel, accessories, eyewear, wetsuits and hardgoods in the sports market. The Complainant's products are licensed and distributed in more than fifty countries, including the United Kingdom. Products sold under the BILLABONG brand have been offered for sale in Europe since 1987 and there are BILLABONG branded shops in the United Kingdom in Castleford, Edinburgh, Freeport, Milton Keynes and Plymouth.

The Respondent is an individual located in South Croydon, United Kingdom.

According to the WhoIs, the Domain Name was registered on 11 June 2001 and the Respondent says that he purchased the Domain Name at some point in 2006.

The Domain Name has, according to both parties, been put to a number of uses since its registration. It currently resolves to a web site featuring a picture of the Sydney Opera House and adjacent Sydney Harbour Bridge, overtyped with the words "Coming Soon!" and with a paragraph that reads:

*Set to launch in mid December 2016, Billabong.co.uk will offer a comprehensive guide to tourism in Australia, written with the UK traveller in mind. Whether you want a city break in Sydney, a sunshine holiday in Surfers Paradise, or an outback adventure in Alice Springs, we will help you put together the perfect Australia holiday.*

Underneath this paragraph, the site has text links to major areas in Australia including, for example, "Australian Capital Territory", "Tasmania" and "Victoria". Each area has sub-titles such as "Guided Tours", "Places To Stay", "Things To See and Do" and "Transport". Whichever link is clicked, a page displaying the following text is displayed:

*Coming Soon! Billabong.co.uk is set to launch in mid December 2016, with a comprehensive tourism guide to Australia, for the UK traveller.*

#### **5. Parties' Contentions**

I have carefully read both Parties' submissions in their entirety and I have set out the salient points below.

##### **5.1.1 Complaint – Rights**

The Complainant has exhibited several United Kingdom and European Union trade marks for the terms BILLABONG and BILLABONG REVOLUTION, in addition to marks made up of the

term BILLABONG combined with a "wave" device mark. The two United Kingdom marks are numbers 1309987 (registered 15 May 1987) and 1390085 (registered 05 July 1989); both are registered in class 25 and are owned by GSM (Operations) Pty Limited.

For the sake of brevity, I will not narrate each of the European Union trade marks. In summary, the earliest registration date is 17 December 2003 and the most recent is 27 August 2015. The exhibited marks are on the whole registered by GSM (Operations) Pty Limited, with the exception of one mark (number 3058732) which is registered by GSM (Trademarks) Pty Limited.

The Complainant also claims unregistered rights in the BILLABONG term and in support of this contention has exhibited a list of 153 domain names, print outs of its website at [www.billabong.com](http://www.billabong.com) and a range of press releases relating to the brand dated from between October 2000 and June 2016.

The Complainant says that the word BILLABONG was first adopted as a trade mark by the founders of the BILLABONG business because of its distinctly Australian connotations. The Complainant contends that the word "billabong" is a native Australian word which means:

*a waterhole in an anabranch replenished only in flood time, or a waterhole in a river or creek that dries up outside the rainy season*

The Complainant avers that people from countries other than Australia, particularly where the official language is a language other than English, would not be expected to be familiar with the dictionary meaning of the word "billabong".

The Complainant contends the Domain Name is identical to its registered and unregistered marks, all of which pre-date the registration of the Domain Name.

### **5.1.2 Complaint – Abusive Registration**

The Complainant has put forward several contentions which relate to the concept of Legitimate Interest, an element of the Uniform Domain Name Dispute Resolution Policy (UDRP) and has referenced several precedents which were decided under the UDRP. Clearly, while both policies are concerned with domain name disputes, the UDRP and Nominet's Dispute Resolution Service (DRS) are entirely separate dispute mechanisms. I have therefore largely ignored the Complainant's contentions which pertain to the UDRP; however, I have considered any points which span both dispute mechanisms and are therefore relevant to the present DRS dispute.

Turning to its submissions specifically addressed to Abusive Registration, the Complainant says that the Domain Name attracts traffic away from its official site, from its clothing and retail services and instead directs users to the Respondent's unauthorised, unlawful and inferior website.

The Complainant says that the Domain Name resolves to a site purporting to offer travel advice for Australia but says that, on further investigation, it is merely a holding page giving the appearance of a legitimate business. The Complainant avers that clicking on the links provided on the website takes the viewer to a page which states "billabong.co.uk has just launched". The Complainant says that this is clearly untrue and says that, at best, the website has sat idle for nearly eight months implying that the website is a façade.

The Complainant says that the Domain Name has also resolved variously to a website located at the URL [www.surfwear.co.uk/billabong](http://www.surfwear.co.uk/billabong); to a Wikipedia entry for the term "billabong"; and to holding pages featuring sponsored links to various sites including pornographic and potentially competing sites. Various screenshots taken from [www.archive.org](http://www.archive.org) have been provided.

The Complainant contends that the Domain Name has in the past directed Internet users to a parking site featuring sponsored links, which it says relate to other websites which compete with the Complainant's site but many of which relate to "adult and pornographic content". The Complainant says that the Domain Name blocks the Complainant from registering the Domain Name in order for the Respondent to "unlawfully obtain revenue and internet traffic to its own website".

The Complainant avers that it cannot envisage any scenario in which the Domain Name could be used which would not disrupt the Complainant's business and be used to trade on the Complainant's fame and reputation. Equally, the Complainant says that it is inconceivable that the Respondent would not have been aware of the Complainant's rights in the Domain Name. The Complainant contends that the Domain Name disrupts the Complainant's business as it attracts traffic away from the Complainant's official and authorised websites and is an absolute block to the Complainant owning and directing its customers to a "billabong.uk domain name".

The Complainant further notes that given the nature of the Domain Name, it cannot envisage a scenario in which the Domain Name is not used in a way which would confuse, or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated by or connected with the Complainant. The Complainant says that the Respondent has used the Domain Name to link to goods and / or services which compete with those of the Complainant. The Complainant contends that visitors to the Respondent's website were likely to believe that the goods and services offered by the Respondent and / or via the Respondent's website were authorised by or otherwise connected with the Complainant.

The Complainant concludes that the Domain Name is clearly an Abusive Registration and it is not possible to conceive of any plausible use of the Domain Name by the Respondent that would not be illegitimate "either as passing off or an infringement of the Complainant's trade marks".

### **5.2.2 Response – Rights**

The Respondent contends that the word "billabong" is a descriptive and generic word and quotes a definition taken from Wikipedia:

*A billabong ... is an oxbow lake, an isolated pond left behind after a river changes course. Billabongs are usually formed when the path of a creek or river changes, leaving the former branch with a dead end. Billabongs, reflecting the arid Australian climate in which these "dead rivers" are found, fill with water seasonally and are dry for a greater part of the year.*

The Respondent says that he purchased the Domain name sometime after 2001, noting that "records are archived and I am unable to identify the exact date. It is estimated that the domain was purchased by me in or around 2006."

### **5.2.3 Response – Abusive Registration**

The Respondent denies that the Domain Name is an Abusive Registration, contending that the Domain Name was purchased to develop a website targeting UK travellers visiting Australia and is therefore being put to fair use.

The Respondent says that with other projects taking priority, it was clear that development of the travel website would be delayed and so while waiting to begin development the Respondent redirected the Domain Name domain to a Wikipedia page which described the meaning of the word "billabong", on which there was no reference to the Complainant's brand, products or its competitors.

The Respondent avers that in 2013 plans began to develop the website which was to be aimed at UK travellers visiting Australia. The Respondent says that a web design agency was instructed and development commenced. The Respondent has exhibited a letter from his web design agency relating to this development.

The Respondent states that while preliminary plans were being processed the Domain Name was parked. The Respondent observes that the parked page provided links to travel providers offering flights, hotels and car hire in the main. The Respondent has referred to various pages on [www.archive.org](http://www.archive.org) and the Respondent contends that there was no reference to the Complainant's brand, products nor its competitors on the parked page.

The Respondent narrates that during 2014 he was contacted by a representative of a company called Cressive Limited who operated a website at the URL [www.surfwear.co.uk](http://www.surfwear.co.uk), which offered, among others, products sold by the Complainant. The Respondent says that Cressive were interested in purchasing the Domain Name and that they asked for the Domain Name to be forwarded to the URL [www.surfwear.co.uk/billabong](http://www.surfwear.co.uk/billabong) to monitor traffic levels while they considered the purchase of the Domain Name.

The Respondent observes that the page at [www.surfwear.co.uk/billabong](http://www.surfwear.co.uk/billabong) displayed the Complainant's products but says that, due to the Complainant's submissions, he is now aware that at least on one occasion products related to the Complainant's competitors were offered for sale on this page. However, the Respondent says that this was not the case when the original redirect was created and contends that the choice of products offered on this webpage was outside his control. The Respondent apologises for any confusion which may or may not have been caused for the period that the redirect was in place and states that he received no monetary gain from the redirect.

The Respondent says that the monitoring demonstrated that there was insignificant traffic from the Domain Name and that no agreement to sell the Domain Name was reached and the redirect was discontinued.

The Respondent has exhibited a letter from the Managing Director of Cressive Limited supporting the Respondent's contentions. The exhibited letter is a simple Microsoft Word document and is not on Cressive Limited headed paper and is unsigned.

Having paused the development of the travel website during the period in which the redirect was active, the Respondent maintains that he then continued with the development of the travel website. The Respondent says that a temporary travel website was published in 2015 and that this is still a work in progress.

The Respondent denies the Complainant's contention that the travel website is a façade, averring that it is a published website, that it is not a holding page and that there are 42 pages indexed in the search engine Google.

The Respondent says that website development takes considerable time and effort in the planning and development stages and that eight months is hardly to be considered a long time for a large website development project. The Respondent has produced a letter from his website development company – WebFlair.co.uk Limited – which notes that the developer was engaged to create a travel website aimed at UK travellers intending to visit Australia. The letter narrates that work began on the site in the summer of 2014, was suspended in 2015, but restarted later in 2015. However, due to other work commitments, the developer was unable to start development and so a

*"...temporary, test website was published to allow Google to index the website until such time that we were able to recommence development. Further development has*

*since been carried out and we anticipate launching a working site in December 2016”.*

A logo for the site has also been produced.

The Respondent denies pointing the Domain Name to any pornographic websites.

The Respondent further contends that the Complainant is wrong to assume that there is only one potential use of the word BILLABONG within a brand or trading name. To support its point the Respondent refers to several other businesses which make use of the term BILLABONG.

Finally, the Respondent notes that to prevent any confusion in future he has published a disclaimer on the website which states “Billabong.co.uk is not associated or affiliated with the Billabong sports clothing brand”

### **5.3 Reply**

In its Reply, the Complainant contends that in the United Kingdom (and throughout the world, including Australia), most people will think of the Complainant and its products when they hear the word BILLABONG and will not be aware of its dictionary meaning.

The Complainant says that the Respondent’s contentions relating to when he purchased the Domain Name are vague and undermine the Respondent’s credibility. The Complainant says that the Respondent has focussed on 2006 to distance the Respondent from the websites that appeared at the Domain Name prior to 2006, including websites with links to adult and pornographic content

The Complainant contends that even if the Respondent did acquire the Domain Name in 2006, no functioning Australian travel website has existed at the Domain Name in the intervening ten-year period. The Complainant maintains that this casts doubt on whether the Respondent ever had a genuine intention to use the website as a travel website.

The Complainant observes that the words “set to launch in December 2016” did not appear on the website associated with the Domain Name until after the Complainant was submitted.

The Complainant says that the “parked page” temporarily associated with the Domain Name featured other links present such as “Shopping”, “Bargains” and in particular “Australia Surfing”, which – the Complainant contends – are highly likely to feature either the Complainant’s brands and products or those of its competitors.

The Complainant comments on the letter produced by the Respondent from the managing director of Cressive Limited and says that the redirect to [www.surfwear.co.uk/billabong](http://www.surfwear.co.uk/billabong) contradicts the Respondent’s claim that there was a genuine intent to develop a website targeting UK travellers visiting Australia. The Complainant contends that the Domain Name was registered for the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Respondent paid for it.

The Complainant further contends that the disclaimer added by the Respondent to the website does nothing to alleviate concerns over confusion; the Complainant suggests that the disclaimer will likely further exacerbate confusion since it contains the phrase “Billabong sports clothing” which could cause false search results and increase traffic to the Domain Name away from the Complainant’s websites, further disrupting the Complainant’s business and confusing users.

The Complainant maintains that the Respondent’s contention that other businesses use the term BILLABONG are completely irrelevant to the dispute

## 6. Discussions and Findings

### 6.2 Rights

Paragraph 1 of the Policy defines Rights as “rights enforceable by the Complainant”. As noted in the Factual Background above, the Complainant in this matter is Billabong International Limited – a public company, limited by shares, incorporated in Australia. However, the registered Rights relied upon by the Complainant are registered by “...wholly owned subsidiaries of Billabong International Limited”, namely GSM (Operations) Pty Limited and GSM (Trademarks) Pty Limited.

The Complainant has not put forward any evidence that GSM (Operations) Pty Limited and GSM (Trademarks) Pty Limited are indeed subsidiaries and has relied on mere assertion rather than evidence that could easily be provided by the exhibition of a licence or other agreement between these companies.

Regretfully, such situations are all too common under the DRS. So much so, that the first paragraph of the Dispute Resolution Service Experts’ Overview<sup>1</sup>, deals with this very question:

***1.1 (a) Who should the Complainant be and (b) when is it necessary or appropriate for there to be more than one Complainant?***

*(a) The Complainant should be the owner/licensee of the Rights in the name or mark, which the Complainant contends is identical or similar to the domain name in dispute. Surprisingly often, complaints under the DRS Policy (“the Policy”) are lodged in the names of persons and entities not demonstrably the proprietor of the relevant Rights.*

*(b) For example, when the Rights relied upon are owned or shared by one entity but used by a group or associate company whose business is disrupted or confusingly connected with the Respondent. Another example could be in circumstances where the Rights relied on have been licensed and, depending on the facts, it may be desirable for both the Licensor and Licensee to be Complainants. If more than one Complainant is named, it is important that the Complaint nominates one of them as the transferee of the domain name in the event that the Complaint succeeds.*

The Overview makes it clear that the ideal situation would have been for the Complaint to be brought jointly in the name of all relevant group companies. But in the absence of the Complaint being brought by Joint Complainants, is the omission of such gravity that the Complaint should fail at this point?

In my view, it is not. It is well established that the Rights threshold in the DRS is a low one. Equally, the question of whether rights that are owned by a different company within the same corporate group as the complainant may be sufficient to entitle that complainant to assert Rights has been considered previously in other cases. For example, the Appeal Panel in Seiko UK Limited v. Designer Time/Wanderweb<sup>2</sup> observed that:

*The requirement to demonstrate ‘rights’ is not a particularly high threshold test. It is satisfied in our view by the assertion of Seiko UK Limited that it is duly authorised by the trade mark owner to use the mark and to bring the Complaint. Where a complainant is a subsidiary or associated company of the trade mark proprietor, such an assertion will in our view generally be sufficient to demonstrate ‘rights’ in the absence of any good reason to doubt the veracity of that assertion.*

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<sup>1</sup> The Expert’s Overview is a document published at [http://www.nominet.uk/wp-content/uploads/2015/08/Expert\\_Overview.pdf](http://www.nominet.uk/wp-content/uploads/2015/08/Expert_Overview.pdf) which deals with a range of issues that regularly come up in DRS disputes

<sup>2</sup> DRS 00248

I take the view that the DRS is designed to be simple, straightforward and quick process and the aims of the Policy would not be served by rejecting complaints on relatively minor technical matters. This is especially so as the Respondent has not challenged the Complainant's assertions, there does not appear to be a good reason for me to challenge them in my decision and, perhaps most importantly, the Respondent does not appear to have been prejudiced by the omission.

I therefore deem that the Complainant has an implied licence between it and GSM (Operations) Pty Limited and GSM (Trademarks) Pty Limited which allows it to enforce the Rights set out in the Complaint.

As the .co.uk suffix is required only for technical reasons, I therefore find that the Complainant has Rights in respect of a name or mark which are identical to the Domain Name.

### 6.3 Abusive Registration

According to Paragraph 1 of the Policy, an Abusive Registration means 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;*

The first major point of contention between the Parties is the time when the registration or acquisition took place. The Respondent says that "it is estimated that the Domain Name was purchased in or around 2006", while the Complainant says that the

*Respondent has deliberately referred to 2006 in order to distance the Respondent from the websites that appeared at the Infringing Domain Name prior to 2006, including websites with links to adult and pornographic content.*

Neither party has put forward any documentary evidence to support either view. The only certain date before me is the date of registration given on the WhoIs for the Domain Name, namely 11 June 2001.

However, I take the view that it is largely immaterial whether the Domain Name was registered by the Respondent in 2001 or whether he acquired it in 2006. The Policy says that a domain name may be Abusive if, at the time when the registration or acquisition took place, it took unfair advantage of or was unfairly detrimental to the Complainant's Rights **or if it has been used** [Expert's emphasis] in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

As I set out in greater detail below, I take the view that the Respondent took unfair advantage of and was unfairly detrimental to the Complainant's Rights at the point that the Domain Name redirected users to the website operated by Cressive Limited at [www.surfwear.co.uk/billabong](http://www.surfwear.co.uk/billabong) which occurred sometime after 2006. It is therefore largely academic whether the Respondent registered the Domain Name in 2001 or acquired it in 2006, as his subsequent use after the later date was Abusive for the reasons I will now outline.



Paragraph 3 of the Policy details a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Paragraph 3.a.ii notes that where there are 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 then that may be evidence the Domain Name is an Abusive Registration.

Indeed, situations where a domain name, which is identical to a complainant's mark, is used to sell the complainant's goods and / or competing goods is a path that is well-trodden under the DRS. It is discussed at length in Paragraph 3.3 of the Expert's Overview, which asks "What is meant by confusing use?" and answers [emphasis added by Expert]:

*The 'confusion' referred to in this paragraph of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an Internet user seeing the domain name or the site to which it is connected believe or be likely to believe that "the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant"?*

*In the case of BT v One In A Million [1999] 1 WLR 903, the Court of Appeal cited, as one example of how confusion of this kind could occur, the making of a Whois search of the registry/registrar database. The enquirer conducts such a search and because of the similarity of the domain name to the well-known trade mark (the case was concerned solely with well-known trade marks), assumes that the registrant is in some way associated with the trade mark owner. Whether or not this is still (if it ever was) a likely scenario, the English Courts have clearly held that mere registration of a domain name can constitute unfair use of a domain name for the purposes of passing off and trade mark infringement, even if nothing more is done with the domain name. The prevailing approach under the DRS is consistent with this. Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.*

*In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; **or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant.** Either way, the visitor will have been sucked in/deceived by the domain name. In the High Court decision *Och-Ziff Management Europe Ltd v Och Capital LLP* [2010] EWHC 2599 (Ch), the court quoted the International Trade Mark Association definition of initial interest confusion as being "a doctrine which has been developing in US trademarks cases since the 1970s, which allows for a finding of liability where a plaintiff can demonstrate that a consumer was confused by a defendant's conduct at the time of interest in a product or service, even if that initial confusion is corrected by the time of purchase". In that case the court held that initial interest confusion is legally actionable under European trade mark legislation.*

*In DRS 07991 (toshiba-laptop-battery.co.uk) an aspect which the appeal panel regarded as being indicative of abusive use was the fact that **the Respondent was using the domain name featuring the Complainant's trade mark to sell in addition to the Complainant's goods, goods competing with the Complainant's goods.***

***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). See for example DRS 00658 (chivasbrothers.co.uk). The further away the domain name is from the Complainant's name or mark, the less likely a finding of Abusive Registration. However, the activities of typosquatters are generally condemned - see for example DRS 03806 (privalege.co.uk) - as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity. See for example the Appeal decisions in DRS 00248 (seikoshop.co.uk) and DRS 07991 (toshiba-laptop-battery.co.uk).*

I concur with the reasoning set out in the Expert's Overview and take the view that the circumstances in the present matter are almost identical to those envisaged by it. As I have said above, the Domain Name is identical to the Complainant's BILLABONG marks and evidence has been put before me that the Domain Name was redirected to a website which featured the Complainant's products and those of unrelated, competing third parties. As outlined in Expert Overview above, there is a large body of previous DRS decisions which say that such use is Abusive in terms of the Policy and I take the view that this matter is no different.

The Respondent has said that he did not benefit commercially from the redirect and I do not have any good reason to doubt this. The Policy does not require a party to have financially benefitted from a domain name for it to be deemed Abusive. If this were not the case, the Policy would be rendered largely impotent.

Both parties have focussed extensively on the use of the Domain Name as a travel site promoting Australia to UK travellers. The Complainant has said that the website is merely a façade, while the Respondent says it is a genuine website that is under development and due to launch soon.

I do not have to decide whether the website is genuine or not. Equally, I do not have to consider the possible use of the Domain Name to link to pornographic sites prior to 2006, or its later redirection to Wikipedia. The redirection to a website selling the Complainant's goods alongside competing products, as described above, is enough to render the Domain Name Abusive in the terms of the Policy. The later use of the Domain Name as a travel site (or, indeed, previous redirection to Wikipedia) does not cure this Abusive use. If this were not the case then, when notified of a complaint, a respondent could simply change the use of a domain name to something innocuously non-Abusive to sidestep the DRS process entirely. Clearly the Policy did not intend this to happen and it should not happen in the present matter.

Likewise, I take the view that the recent addition of a disclaimer or the undoubted fact that other businesses use the term BILLABONG also do nothing to cure the Respondent's Abusive Registration.

Although this matter does not turn on whether the Respondent's travel site is genuine or not, I will briefly consider it for completeness. It does seem to me curious that since his acquisition of the Domain Name the Respondent has had approximately ten years to develop a travel site and that he has made very little progress in doing so. Equally, the Respondent's actions in actively trying to sell the Domain Name does not seem to be entirely compatible

with the desire to create a genuine, *bona fide* travel site. These actions (or, indeed, lack of action) colour my view of the Respondent's acquisition and subsequent use of the Domain Name and go some way to supporting my view that the Domain Name has been used in a manner which has taken unfair advantage and has been unfairly detrimental to the Complainant's Rights.

## **7. Decision**

Having found that the Complainant has Rights in respect of a mark which is identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration I order that the Domain Name is transferred to the Complainant.

Signed: Tim Brown

Dated 24 November 2016