

Dispute Resolution Service

DRS 18665

Decision of an Independent Expert

Jaguar Land Rover Limited

and

Alan Olnier

1. Parties

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

Respondent: Alan Olnier
Land Rover Clinic Ltd
2 Dutton Road
Aldermans Green Industrial Estate
Coventry
CV2 2LE
United Kingdom

2. Domain Name

thelandyclinic.co.uk (the "Domain Name")

3. Procedural Background

On 14th March 2017 the Complaint was lodged with Nominet UK Limited (“Nominet”) and it was validated on the same day. On 14th March 2017 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint, and giving him 15 business days within which to lodge a Response on or before 4th April 2017. On 31st March 2017 Nominet sent the Respondent a Response reminder. No Response was received by 4th April 2017. On 5th April 2017 Nominet sent the notification of no response to the parties. On 19th April 2017, the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 24th April 2017 Mr. Niall Lawless (“the Expert”) was appointed to act as Expert in this dispute. He is required to give his Decision by 19th May 2017. Mr. Lawless has confirmed that he knew of no reason why he could not properly accept the appointment, and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence.

4. Outstanding Formal -/- Procedural Issues

There are no outstanding formal or procedural issues.

5. Factual background

The Complainant, Jaguar Land Rover Limited (JLR), is a company incorporated in the United Kingdom. It is a manufacturer of premium saloons and sports cars, sports utility vehicles, and motor-racing vehicles. JLR is based in the Midlands region of England and employs over 25,000 people in the UK. JLR has built up extensive IP rights, including a large portfolio of trade mark registrations and common law rights in the various brands it uses. JLR owns, amongst others, UK trade mark No. 3035561 LANDY in classes 12, 21, 25, 28 and 35 dated 19th December 2013. The Respondent registered the Domain Name on 14th January 2014.

6. The Parties’ contentions

The Complainant

The Complainant seeks transfer of the Domain Name. The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because, in particular:-

- use of the Domain Name by the Respondent is likely to cause confusion on the part of internet users as they are likely to believe that they have been directed to a website which is connected/associated with the Complainant or which is authorised by the same, which is not the case.
- use of the term “Landy” in the Domain Name suggests a connection between the Respondent and the Complainant or creates the impression that the Respondent’s activities are authorised by the Complainant, which is not the case.
- the Domain Name is being used by the Respondent to direct consumers to a website which is not connected to the Complainant but which provides identical/similar goods and services to those which the Complainant has registered trade mark protection for.
- Use of the term “LANDY” takes unfair advantage of the Complainant’s trade mark rights by trading off the back of the reputation in their “LANDY” mark and exploiting the goodwill and prestige that the Complainant has spent time and effort in building up.

The Respondent

The Respondent has not responded.

7. Discussions and Findings

7.1 General

Nominet’s DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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 took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.

7.2 Complainant's Rights

The Complainant is the registered proprietor of the UK trade mark No. 3035561 "LANDY" in classes 12, 21, 25, 28 and 35 dated 19th December 2013. The Complainant has acquired goodwill and a significant reputation associated with the term "LANDY". Goods and services associated with the Complainant's LAND ROVER vehicles are commonly and colloquially referred to as "LANDY" goods and services. Therefore, the Complainant has acquired unregistered rights in the term "LANDY", and there is a clear association between the term "LANDY" and the Complainant.

Although the Domain name includes the word "clinic", this is a descriptive reference to the nature of the Respondent's services (namely the servicing or restoration of LAND ROVER vehicles) and fails to distinguish the Domain Name from the term "LANDY". Because of this, I decide that the Complainant has Rights in respect of a name or mark, which is identical or similar to the Domain Name.

7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy. Under paragraph 5 - Evidence of Abusive Registration - guidance is given as to what factors may be evidence that the Domain Name is an Abusive Registration.

"A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows :-

5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;

5.1.2 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."

Likelihood of confusion

The Complainant says that the Respondent's use of the Domain Name is likely to cause confusion on the part of internet users as they are likely to believe that they have been directed to a website which is connected/associated with the Complainant or which is authorised by the same, which is not the case.

The Complainant refers the Expert to DRS 07991 Toshiba Corporation -v- Power Battery Inc., where the Appeal Panel commented on whether it would be fair if a Domain Name incorporating the Complainant's trade mark right, also sold competing goods and stated that:

"... if and insofar as it is fair for a retailer to incorporate a trade mark into its domain name... that fairness is likely to be dependent upon the retailer only selling the trade mark owner's genuine products. To do so otherwise is likely to take unfair advantage of the Complainant's rights by "riding on its coat-tails" for the benefit of the Respondent. This element of unfair advantage remains, even where there little or no detriment to the Complainant has been demonstrated."

The Complainant says that the Respondent is not an authorised dealer of the Complainant's vehicles nor is the Respondent an authorised "Service Centre" nor is it a franchisee; therefore the Respondent has no authorisation to use the "LANDY" trade mark in its Domain Name. Because of this the Respondent's use of the Domain Name to direct consumers to a website which is not connected to the Complainant but which provides identical/similar goods and services to those which the Complainant provides is likely to confuse consumers.

The Respondent does not respond to this Abusive Registration factor claimed by the Complainant.

The test for abuse under paragraph 5.1.2 of the Policy is that 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 ..."

Confusion would arise where the Internet user incorrectly assumes that the website the Domain Names resolves to, and the Complainant's other official websites are either both authorised by or belong to the Complainant.

Given that on 27th April 2017, the Domain Name resolved to a website which although seemingly still under construction promotes itself as *“The Landy clinic - where Landys get better”* and states *“We are based in Coventry and we specialise in Land Rover® vehicles. If you are looking for a simple service, or need a complete rebuild or restoration we are here to help”*, I consider that there is a real possibility that an internet user arriving at the website linked to the Domain Name would assume that it relates to goods provided by the Complainant and that it is a domain and site owned and provided by the Complainant. The very small footnoted text at the bottom of the page *“Land Rover® and Range Rover® are registered trade marks of Jaguar Land Rover”* does nothing to dispel this impression and may, if anything, reinforce it.

Accordingly I conclude that the Respondent’s use of the Domain Name linking to the current website is confusingly similar such that it would be abusive under paragraph 5.1.2 of the Policy.

7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

Niall Lawless, Nominet Expert

6th May 2017