

DISPUTE RESOLUTION SERVICE

D00018697

Decision of Independent Expert

Stannah Stairlifts Ltd

and

Ms Rachael Greenan

1. The Parties:

Complainant: Stannah Stairlifts Ltd
Watt Close, East Portway
Andover
Hampshire
SP10 3SD
United Kingdom

Respondent: Ms Rachael Greenan
104 Bridge Road
Grays
RM17 6DA
United Kingdom

2. The Domain Name:

stannah-stairlifts.co.uk

3. Procedural History:

3.1 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 such a nature as to call in to question my independence in the eyes of one or both of the Parties.

3.2 Timeline

08 May 2017 14:27 Dispute received
10 May 2017 08:18 Complaint validated
10 May 2017 08:19 Notification of Complaint sent to Parties
30 May 2017 02:30 Response reminder sent
05 June 2017 11:30 No Response received
05 June 2017 11:30 Notification of no Response sent to Parties
15 June 2017 02:30 Summary/full fee reminder sent
16 June 2017 13:53 Expert decision payment received

4. Factual Background

4.1 The Complainant has been registered at Companies House since 26 November 1988 and it provides goods and services related to stairlifts under the “Stannah” brand.

4.2 The Complainant is the proprietor of a European Trade Mark registration for the (word) mark STANNAH in classes 7 and 30 covering, inter alia, stair lifts. This mark has a registration date of 9 February 1999.

4.3 The Domain Name was registered on 2 December 2010. It resolves to a website which advertises “Stannah Stairlifts” and repair services related to the same.

5. Parties’ Contentions

The Complainant

5.2 The Complainant contends that, as a result of its promotional activity (which includes advertisements, marketing materials, press cuttings and search engine results), its “Stannah Stairlifts” brand is well known and is recognised by the purchasing public as indicating goods and services of the Complainant.

5.3 The Complainant goes on to assert that the Domain Name, in the hands of the Respondent, is an Abusive Registration, for the following reasons:

- The Domain Name is similar to the UK website for Stannah Stairlifts (www.stannahstairlifts.co.uk) and similar to the equivalent US website (www.stannah-stairlifts.com).
- The Domain Name is being used to confuse internet users into believing that they are enquiring about the Complainant. When completed, the “contact us” form on the website to which the Domain Name resolves delivers a thank you message referencing a major competitor of the Complainant.
- Within an hour of completing this form, the Complainant received a call from this competitor. A potential purchaser looking for information regarding the Complainant would therefore receive a phone call from a competitor rather than the Complainant itself.
- The Domain Name consists of the trade mark Stannah Stairlifts.
- The Complainant owns the copyright in the images used on the website to which the Domain Name resolves.

The Respondent

5.3 The Respondent has not responded to the Complaint.

6. Discussions and Findings

General

- 6.1 For the Complainant to succeed with its Complaint it is required under paragraph 2.2 of the Policy to 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.
- 6.2 The actual Complaint in this case is very brief. This is despite the Complainant having received a Chairman’s warning at the time that it first filed its Complaint (see paragraph 5.12 of the Dispute Resolution Service – Experts’ Overview).
- 6.3 The Complainant has however adduced some evidence in support of its Complaint by way of Exhibits filed at the same time as the Complaint and that are referred to therein. I have taken the nature and content of these into account in coming to my decision. The Complainant is also helped by the fact that the Respondent did not respond to the Complaint and I am therefore left to make my decision

based only on the unchallenged evidence of the Complainant, drawing such inferences from the Respondent's failure to respond or challenge as I consider appropriate (Paragraph 24.8 of the Nominet DRS Policy). However, I bear firmly in mind that it is still incumbent on the Complainant to prove its case (Paragraph 2.2 of the Policy).

Complainant's Rights

- 6.4 Paragraph 1 of the Policy provides that Rights means "rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning". Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.
- 6.5 The Complainant has demonstrated that it has a European trade mark registration for the mark "STANNAH" dating back to 1999. It has also put forward evidence, by way of a marketing brochure highlighting the Complainant's 150th year in trading, to show that it uses the STANNAH mark in the course of trade. For the purposes of the Policy therefore I find that it has Rights in respect of the mark STANNAH.
- 6.6 The Domain Name incorporates the Complainant's STANNAH mark suffixed by a hyphen and the word "stairlifts" (ignoring the generic .co.uk top level suffix). The specification of the Complainant's EU trade mark registration referenced in paragraph 4.2 above includes stairlifts and the Complainant has adduced evidence to show that it is in the business of manufacturing, designing and building stairlifts under the STANNAH brand. This additional element of the Domain Name is therefore closely associated with the Complainant and does not materially distinguish the Domain Name from the mark in which the Complainant has Rights.
- 6.7 I therefore find that the Complainant has established that it has Rights in respect of a name or mark which is similar to the Domain Name and accordingly the Complainant has satisfied the first limb of the Policy.

Abusive Registration

- 6.8 Paragraph 1 of the Policy defines "Abusive Registration" as 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 took unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

- 6.9 Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration.
- 6.10 Paragraph 5.1 of the Policy states as follows:
- “5.1 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;
- 5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .UK or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;
- 5.1.4 It is independently verified that the Respondent has given false contact details to us;
- 5.1.5 The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:
- 5.1.5.1 has been using the Domain Name registration exclusively; and

5.1.5.2 paid for the registration and/or renewal of the Domain Name registration;

5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant *has Rights, the Complainant's mark has a reputation and* the Respondent has no reasonable justification for having registered the Domain Name.”

- 6.11 I accept, given (i) the Complainant's unchallenged assertions that it provides stairlift-related goods and services under the STANNAH brand, (ii) the Complainant's European trade mark registration for the word mark STANNAH covering, inter alia, stairlifts, and (iii) the evidence adduced by way of Annexes to the Complaint (including a marketing brochure and examples of advertisements), that the STANNAH brand is likely to be known amongst the relevant public as denoting the Complainant and its goods and services.
- 6.12 Further, as noted above, the Domain Name incorporates not only the Complainant's STANNAH mark but also the word “stairlifts”, which term is very closely associated with the Complainant.
- 6.13 Given these circumstances, and in the absence of any explanation to the contrary from the Respondent, it seems to me to be highly likely (i) that the Respondent would have been aware of the Complainant, its “STANNAH” mark and its business related to stairlifts at the time of registration of the Domain Name and (ii) that the Domain Name was chosen and registered by the Respondent to create a false association with the Complainant's STANNAH mark and to take some kind of advantage of the goodwill attached thereto.
- 6.14 In addition, the Respondent is making use of the Domain Name by having it resolve to a website which, according to unchallenged assertions of the Complainant, (a) displays certain images, the copyright of which is owned by the Complainant, and (b) allows potential customers to be contacted by a major competitor of the Complainant. This also suggests that some confusion between the Domain Name and the Complainant is likely.
- 6.15 Finally, notwithstanding the absence of a Response to this Complaint, but for the purposes of establishing whether or not the Domain Name, in the hands of the Respondent, is an Abusive Registration, paragraph 8 of the Policy invites the Expert to ask if there are circumstances which might assist the Respondent in arguing that the Domain Name is not abusive. A non-exhaustive list of such matters is set out in this paragraph 8. The Respondent has not offered an explanation of its actions and I do not believe that the possible lines of defence suggested in paragraph 8 of the Policy can be of any assistance to the

Respondent. A business advertised online which attracts in customers by deceit through the unauthorised use of the trade mark of another cannot on any view be regarded as a genuine offering of goods and services, nor can it be regarded as legitimate or fair.

- 6.16 In these circumstances I find on the balance of probabilities that the Domain Name has both been registered and been used in a manner which has taken unfair advantage of and has been unfairly detrimental to the Complainant's Rights and it follows therefore that the Domain Name, in the hands of the Respondent, is an Abusive Registration in accordance with both limbs of its Policy definition.

7. Decision

- 7.1 The Complainant has established that it has Rights in respect of a name or mark which is similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration.
- 7.2 Accordingly, the Complaint succeeds and I direct that the Domain Name <stannah-stairlifts.co.uk> be transferred to the Complainant.

Signed Ravi Mohindra

Dated 2 July 2017