

# **DISPUTE RESOLUTION SERVICE**

**D00019217**

## **Decision of Independent Expert**

Shenzhen Foscam Intelligent Technology Co., Ltd

and

ravattradingllc@gmail.com

**1. The Parties:**

Lead Complainant: Shenzhen Foscam Intelligent Technology Co., Ltd  
9/F, Block F5, TCL International E City, #1001  
NanShan District  
Shenzhen  
No.1001  
China

Respondent: ravattradingllc@gmail.com  
12633 Memorial Dr. #211  
Houston  
Texas  
77024  
United States of America

**2. The Domain Names:**

foscam.co.uk  
foscam.uk

**3. Procedural History:**

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 into question my independence in the eyes of one or both of the parties.

The dispute was received by the Dispute Resolution Service (DRS) on August 8, 2017 and was validated and notified to the Parties on the same date. A reminder to provide a response was sent to the Respondent on August 28, 2017, with no reply. A notification of no response having been received was sent to the Parties on August 31, 2017.

The fee for an expert decision was received on September 1, 2017 and Clive Trotman was appointed Expert with effect from September 7, 2017.

#### **4. Factual Background**

The factual background about the Complainant and the Respondent is taken from the Complaint and is supported by evidence that the Respondent has not contested.

The Complainant, operating from the Republic of China since February 27, 2008, supplies security products such as cameras under the brand FOSCAM for do-it-yourself installation. The Complainant has provided details of its holding of eight trademarks for FOSCAM of which the following, being the earlier dated, are representative for the purposes of the present proceeding:

FOSCAM, stylised characters with a symbol inside the letter "O", European trademark, Office for Harmonization in the Internal Market, filed October 13, 2010, registered April 26, 2011, registration number 9441643, class 9;

FOSCAM, stylised characters with a symbol inside the letter "O", United States Patent and Trademark Office (USPTO), principal register, registered January 4, 2011, registration number 3900390, class 9.

The Complainant also owns the domain name foscamluk.com.

The Respondent's company, previously known as Foscam Digital Technologies LLC and registered in Texas on December 29, 2010, also known as Foscam US, was a distributor for the Complainant until 2016, when the Parties ended their partnership following disputes. An affiliated company of Foscam Digital Technologies LLC, named Foscam Digital Technologies UK Ltd., was incorporated on December 30, 2010 and gazetted as dissolved by compulsory strike-off on August 13, 2013. Foscam Digital Technologies LLC recently changed its name to Amcrest Industries LLC. Together with Amcrest Technologies LLC and Amcrest Global Holdings Limited, the entities incorporating the name Amcrest are owned by Abdurahman Ravat.

The disputed Domain Names were registered in the name of the Respondent on March 18, 2010 (foscamluk.co.uk) and August 29, 2014 (foscamluk.uk). They resolve to a website that makes comments about FOSCAM products and refers to Amcrest security products that compete with the Complainant's products. The Complainant has received copies of emails from dissatisfied customers who apparently thought they had been dealing with the Complainant but had been dealing with the Respondent.

## 5. Parties' Contentions

### Complainant's Rights

The Complainant has submitted copies of registration documents in its name but with a different address in respect of the trademarks listed in section 4 above, and of six other trademarks of later date, one of which is in Chinese.

### Abusive Registration

The Complainant says the present owner of the Domain Name foscam.co.uk is Foscam Digital Technologies LLC. The Complainant has produced a screen capture of the home page of the Domain Name foscam.co.uk and says visitors are confusing it with the Complainant because of the message it displays.

The Complainant says that at the time when it and Foscam Digital Technologies LLC ended their distribution agreement, a settlement agreement was entered into, the terms of which included the transfer of two FOSCAM trademarks from the Respondent to the Complainant, and an agreement permitting the Respondent to continue to use the Domain Names provided they were used to sell only FOSCAM-branded products. Foscam Digital Technologies LLC, or Amcrest Industries LLC, and associated entity Foscam US have breached this agreement by no longer stocking FOSCAM products and by using the Domain Names for the promotion of Amcrest products.

The Complainant requests the transfer of the Domain Names.

### Respondent

The Respondent has not replied to the Complaint.

## 6. Discussions and Findings

### Identity of the Respondent

Paragraph 1 of the Policy defines the Respondent "the person (including a legal person) in whose name or on whose behalf a Domain Name is registered". The Complainant has nominated "ravattradingllc@gmail.com" as the Respondent. According to the Nominet records of registration for both Domain Names, the registrant provided the name "Ravattrading", the contact details ravattradingllc@gmail.com, and the physical address of record above. The Complaint was sent to the email addresses ravattradingllc@gmail.com, copied to the postmaster at each Domain Name, and by registered post to the physical address of record above. DRS records do not show any correspondence to have been returned. The Expert is satisfied that the DRS properly proceeded to notify the Respondent of the Complaint in accordance with the stipulations of paragraph 3 of the Policy.

The Respondent, as Ravattrading or ravattradingllc@gmail.com, is linked to Foscam Digital Technologies LLC and Amcrest entities as follows. The website to which the Domain Name foscam.co.uk resolves, states *inter alia*: "We, Foscam.co.uk (aka Foscam Digital Technologies and now Amcrest technologies)...". Lower down, the website invites visitors to go to www.amcrest.co.uk for further information. The Expert is satisfied that Ravattrading, ravattradingllc@gmail.com, Foscam Digital Technologies LLC and Amcrest entities are sufficiently inter-related that they may be referred to collectively as the Respondent.

The Domain Name foscam.uk is not referred to anywhere in the body of the Complaint but has the same ownership as foscam.co.uk, to which it evidently redirects, therefore the consideration of the Complaint will be applied equally to both disputed Domain Names.

### **Complainant's Rights**

The Complainant has produced copies of three trademark registration documents for FOSCAM that it says date back to October 13, 2010, and of four trademark registration documents that it says date back to May 20, 2010 (the Chinese trademark said to date from December 2009 cannot be perused as a translation is not provided). In fact, only European trademark number 9441643 has a date of filing of October 13, 2010, and was registered on April 26, 2011. The USPTO trademark number 3900390 was granted registration on January 4, 2011. The other trademarks have registration dates between 2015 and 2017.

Paragraph 2.1.1 of the Policy, however, is stated in the present tense and requires that "The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name". Rights are defined in paragraph 1 of the Policy as "... rights enforceable by the Complainant, whether under English law or otherwise, ...". The Domain Names, disregarding country code and second level designations, comprise the word "foscam", which is identical to the name FOSCAM that is a distinctive part of the Complainant's business name and in which the Complainant holds registered trademark rights. Accordingly the Expert finds for the Complainant under paragraph 2.1.1 of the Policy.

### **Abusive Registration**

Paragraph 2.1.2 of the Policy requires the Complainant to prove additionally that "The Domain Name, in the hands of the Respondent, is an Abusive Registration". Paragraph 1 of the Policy defines an Abusive Registration as a Domain Name that 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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights".

Paragraph 5.1 of the Policy provides a non-exhaustive list of factors that may be evidence of the Domain Name being an Abusive Registration, including the following:

- "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".

Paragraph 8 of the Policy sets out how the Respondent may demonstrate that each Domain Name is not an Abusive Registration. The Respondent has made no showing in terms of paragraph 8 of the Policy and is not obliged to do so. The Complainant must nevertheless prove its case.

According to the Complainant's uncontested statement, the Respondent was a reseller of the Complainant's products between 2010 and 2016. When the partnership was terminated in January 2016, the Respondent agreed, among other things, to use the Domain Names only to

sell Foscam-branded products. A copy of the agreement has not been produced but the matter is not pivotal.

A screen capture produced by the Complainant of the Respondent's website to which the Domain Name foscam.co.uk resolved (and to which foscam.uk redirects), features prominently the FOSCAM trademark in logo form, a picture of a security camera bearing the Complainant's FOSCAM logo, and links to pages labelled "Foscam Products", "Foscam Demo" and "Foscam Firmware". Under the prominent heading "Important Message from Foscam Digital Technologies Regarding UK Sales & Service", the website states its discontent with the Complainant and then states: "In the meantime, we have launched our own new brand of IP cameras called Amcrest, which has superior quality products and full telephone technical support 7 days per week. We hope you can support us in our new venture. For more information, please visit [www.Amcrest.co.uk](http://www.Amcrest.co.uk)".

Thus, the Domain Names are not being used only to sell Foscam-branded products, but on the contrary are critical of the Complainant, claim the superiority of competing Amcrest products, and direct customers to the Respondent's website at [www.amcrest.co.uk](http://www.amcrest.co.uk).

The Complainant has produced evidence in the form of emails to show that consumers have been actually confused between the Respondent and the Complainant. One email to the Complainant, attaching an order confirmation from the Respondent, complained that no product had been received after 12 days. A second email to the Complainant was from a customer who had placed an order with the Respondent 24 days earlier and had not received product or a requested refund. A third email to the Complainant was from a customer complaining about being given a run-around at the hands of, as it transpired, the Respondent. It was clear in each of these email files that the respective customer had initially confused the Respondent with the Complainant.

On the evidence, and on the balance of probabilities, the Expert finds the Domain Names to have been used clearly within the contemplation of paragraph 5.1.2 of the Policy, *i.e.*, "... in a way which has confused ... people ... into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant". By referencing Amcrest products through the Domain Names, which effectively comprise the Complainant's trademark, the Respondent has conducted or endeavoured to conduct its business by leveraging off the name and reputation of the Complainant and its registered trademark. The Domain Names are found to have been used in a manner that has taken unfair advantage of, and has been unfairly detrimental to, the Complainant's Rights, constituting an Abusive Registration in the hands of the Respondent.

## **7. Decision**

The Expert finds that the Complainant has Rights in respect of a name or mark similar and effectively identical to the Domain Names foscam.co.uk and foscam.uk and that the Domain Names in the hands of the Respondent are Abusive Registrations. The Domain Names foscam.co.uk and foscam.uk are ordered to be transferred to the Complainant.

**Signed** Clive Trotman

**Dated** September 13, 2017