

# **DISPUTE RESOLUTION SERVICE**

**D00020773**

## **Decision of Independent Expert**

**B & E Boys Ltd**

and

**Lewis Hurst**

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

Complainant:  
B & E Boys Ltd  
Todd Carr Road  
Waterfoot  
Rossendale  
Lancashire  
BB4 9SJ  
United Kingdom

Respondent:  
Lewis Hurst  
London  
United Kingdom

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

selectmilitaryvehicles.co.uk

### **3. Procedural History and Procedural Matters:**

3.1 I 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

The dispute was received by Nominet on 31 October 2018. On the same day, the Complaint was validated and notification of the Complaint was sent to the Parties. On 19 November 2018, a Response reminder was sent to the Respondent.

The Respondent failed to submit a Response within the prescribed timeframe under the Policy and so on 22 November 2018, a notification of no Response was sent to the Parties. On 27 November 2018, payment for an Expert decision was received and the Expert, Ravi Mohindra, was appointed on 3 December 2018.

## 4. **Factual Background**

- 4.1 The Complainant is a business that trades in historic military vehicles, through a website that allows retailers of such vehicles and associated memorabilia to promote their businesses, and also through its own channels. It sells such vehicles to buyers in numerous countries, including the USA, Canada, Czech Republic and Germany.
- 4.2 The Domain Name was registered by the Respondent on 2 April 2018. At the date of the Complaint, the Domain Name did not resolve to an active website.
- 4.3 The Respondent did not file a Response in this case.

## 5. **Parties' Contentions**

- 5.1 A summary of the Complainant's contentions is set out below.

### Rights

- 5.2 The Complainant says that it has been trading for over 55 years under the name 'B and E Boys Ltd'. It says that it has also been trading under the name 'Select Military Vehicle Sales' for almost 30 years through its own page on the <Milweb.net> website, which is an online hub used by many retailers of historic military vehicles and other military memorabilia retailers to promote their businesses of buying and selling historic or classic military vehicles.
- 5.3 The Complainant says that the name 'Select Military Vehicle Sales' is unique to it and that, according to the Complainant's knowledge, it is not used by anyone else.

### Abusive Registration

- 5.4 The Complainant asserts that it registered the Domain Name in around 2010 through Online Media Direct (“OMD”), a company that the Complainant employed to build its website. OMD bought the Domain Name on the Complainant’s behalf and invoiced the Complainant for the costs of registration, which the Complainant duly paid.
- 5.5 The Complainant asserts that it used the Domain Name to host a website which advertised its vehicles and allowed users to send the Complainant email enquiries.
- 5.6 The Complainant says that it continually paid OMD for hosting renewals relating to the Domain Name, however, in early 2018, despite the Complainant confirming that OMD should renew the Domain Name, for some reason the original registration of the Domain Name appears to have been cancelled.
- 5.7 As a result, the Complainant’s website under the Domain Name ceased to be available. The Complainant says that it has tried to contact OMD to confirm whether or not it still holds the Domain Name but it has been unable to obtain a response.
- 5.8 The Complainant avers that the Domain Name is not being used and that there is no other business that could have a name that corresponds with the Domain Name.

#### The Respondent

- 5.9 As noted above, the Respondent did not file a Response in this case.

## **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 me, 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.

#### Complainants’ Rights

- 6.2 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'.

- 6.3 Further, it is well accepted that the question of whether the Complainant has Rights falls to be considered at the time that the Complainant makes its Complaint and is a test with a low threshold to overcome.
- 6.4 The Complainant does not appear to hold any registered trade mark rights in relation to the name 'Select Military Vehicles', or indeed any other similar term.
- 6.5 The Complainant has, however, asserted that it has traded under the name 'Select Military Vehicle Sales' for almost 30 years. This assertion is supported by some evidence that it has annexed to its Complaint.
- 6.6 This supporting evidence includes a screenshot from the Complainant's page on the <www.milweb.net> website which displays the trading name 'Select Military Vehicle Sales' in a prominent banner at the top of the web page and contains wording promoting the Complainant's business of sale in military vehicles together with pictures of a variety of military vehicles. Further, this page contains references to the Complainant's limited company name 'B&E Boys Ltd', contained both under the 'Select Military Vehicle Sales' banner and towards the bottom of the page.
- 6.7 Further, whilst the Complainant has not provided any evidence showing any actual use of the Domain Name by it (including by way of screenshots of any website that it may have previously operated under it), it has annexed to its Complaint copies of emails dating back to June 2010 in which potential customers of the Complainant make enquiries or refer to various vehicles by reference to website links containing the Domain Name.
- 6.8 In addition, the first result of a search on Google for the term "Select Military Vehicle Sales" is a link to the Complainant's page of the <www.mileb.net> website as described above.
- 6.9 Based on the above, including the unchallenged assertions regarding trade by the Complainant under the name 'Select Military Vehicle Sales' (and supported by evidence provided by the Complainant), I am prepared to find, on the balance of probabilities, that the Complainant has Rights in respect of the mark 'Select Military Vehicle Sales'.
- 6.10 In addition, in light of the fact that the Complainant has previously made use of the Domain Name when it was under its control and that customers have referred to vehicles listed by the Complainant under the Domain Name, I am also prepared to find, on the balance of

probabilities, that the Complainant has Rights in respect of the name <selectmilitaryvehicles.co.uk>.

- 6.11 The Domain Name is identical to the name <selectmilitaryvehicles.co.uk> and is similar to the name 'Select Military Vehicle Sales'. The Complainant holds Rights in respect of each of these names. In respect of the latter, the 'Sales' element included in the Complainant's mark is a generic and non-distinctive term denoting and referring to the sales aspect of the Complainant's business in respect of military vehicles, and its omission does not materially distinguish the Domain Name from the name in which the Complainant holds Rights.
- 6.12 I therefore find that the Complainant has established that it has Rights in respect of a name or mark which is identical or similar to the Domain Name and accordingly the Complainant has satisfied the first limb of the Policy.

#### Abusive Registration

- 6.13 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.*
- 6.14 This definition requires me to consider whether, at the time of registration/acquisition by the Respondent, or subsequently through the use that has been made of it by the Respondent, the Domain Name is an Abusive Registration.
- 6.15 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. Paragraph 8 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is not an Abusive Registration.
- 6.16 The Complainant does not specifically rely on any of the factors listed in paragraph 5 of the Policy to make out its case on Abusive Registration. The Complainant's case in respect of Abusive Registration is essentially that:
- Online Media Direct, a website design, build and hosting agency, bought the Domain Name on the Complainant's instruction and behalf in around 2010, for the Complainant to be able to further

promote and increase its online presence under the name 'Select Military Vehicle Sales';

- the Complainant reimbursed the agency for the original registration of the Domain Name and also paid the agency for subsequent registration and hosting renewals relating to the Domain Name;
- the Complainant has previously used the Domain Name to promote its own website and generate additional web traffic and increase its sales;
- the Complainant instructed the third party agency to renew the Domain Name early in 2018, but at some point after that instruction it became apparent that the Complainant's website hosted under the Domain Name was no longer available;
- the Complainant has used the name 'Select Military Vehicle Sales' for over 30 years; and
- the Domain Name is not being used and that there does not appear to be any other business that could possibly have a name as specific as the Complainant's trading name 'Select Military Vehicle Sales'.

6.17 The Complainant is now unable to contact OMD and it does not know whether it is still in control of the Domain Name registration.

6.18 If OMD is in fact the present registrant of the Domain Name (and therefore, the Respondent), then this would be a case that falls squarely within the factor set out in paragraph 5.1.5 of the Policy, as it is clear from the Complainant's case that the Domain Name was registered as a result of a relationship between the Complainant and OMD, the Complainant has been using the Domain Name registration exclusively, and it paid for the registration and subsequent renewals of the Domain Name registration.

6.19 However, there is no indication that the current registrant of the Domain Name is either OMD itself or someone connected with it. The Complainant states that it has been unable to confirm if OMD still hold the registration of the Domain Name. I note that the name of the Respondent is listed as 'Lewis Hurst', and this name bears no resemblance to either OMD or the names listed on any of the correspondence between the Complainant and OMD that the Complainant has annexed to its Complaint regarding OMD's services that it provided to the Complainant.

6.20 Accordingly, there is no evidence to prove, on the balance of probabilities, that the Domain Name was registered as a result of a relationship between the Complainant and the Respondent in this case. Paragraph 5.1.5 of the Policy does not therefore assist the Complainant in making out its case on Abusive Registration.

6.21 What appears to have happened based on the factual and evidentiary matrix in this case is that OMD failed to renew the Domain Name registration on the Complainant's behalf when it fell due for renewal at

some time in 2018 prior to the date of the Complaint, despite the instruction to do so from the Complainant. As a result, the original Domain Name registration would have lapsed and accordingly, at some time afterwards, the Domain Name became available for registration. That subsequent registration of the Domain Name was made by the Respondent and it took place on 2 April 2018.

- 6.22 In the absence of a Response, it is not possible to state with certainty what the motives of the Respondent were when it registered the Domain Name.
- 6.23 However, the Complainant has proved that it has traded under the mark 'Select Military Vehicle Sales', and has made use of the name "Select Military Vehicles" as part of the Domain Name when it was under its control since at least 2010.
- 6.24 Further, the Complainant also makes an unchallenged assertion that there does not appear to be any other business that could possibly have a name as specific as the one the Complainant has adopted and in which it has Rights. The term 'Select Military Vehicles' comprises three separate and distinct English words, however, the combination of the words makes the overall term slightly unusual and appears to be distinct to the Complainant in the niche field of military vehicle sales and associated trade relating to such vehicles. From a quick look at the Google search results for the term "Select Military Vehicles", the first organic (non-sponsored) result is a link to, and brief description of, the Complainant's page on the <milweb.net> website.
- 6.25 There is no obvious explanation as to why the Respondent would have chosen the term in the exact format as that which the Complainant trades under, and included that term in a domain name without further adornment or differentiation. For example, if the Respondent wanted to trade under or promote a website which dealt with military vehicles, it could have chosen an alternative prefix to the 'Select' one which the Complainant uses.
- 6.26 The Respondent has provided no explanation of its reasoning behind its registration of the Domain Name, which was made shortly after the original registration lapsed and the Complainant's website was no longer available. The Respondent has not put in a Response and there is no active website operating under the Domain Name.
- 6.27 I am therefore led to conclude that the Respondent had the Complainant and/or its Rights in mind when it registered the Domain Name and that the reason the Respondent registered the Domain Name was to take some advantage of the Complainant's goodwill and reputation in its trading names. Put another way, given the nature of the mark 'Select Military Vehicles' and the use that the Complainant has clearly made of it including by way of the Domain Name when it was previously under its control dating back to 2010, it is difficult to

think of a set of circumstances in which a third party could have registered or used the Domain Name consisting of the term 'Select Military Vehicles' for use in particular in connection with a business similar to the Complainant's without knowledge of the Complainant.

- 6.28 I have considered each of the factors set out in paragraph 8 of the Policy and in this case I do not find any of these factors apply.
- 6.29 As a result, I find that the Respondent has taken unfair advantage of the Complainant's Rights and that, on the balance of probabilities, the Domain Name, in the hands of the Respondent, is an Abusive Registration.

## **7. Decision**

- 7.1 I find that the Complainant has proved that it has Rights in a name or mark which is identical and/or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 I therefore direct that the Domain Name be transferred to the Complainant.

Signed Ravi Mohindra

Dated 17 December 2018