



DISPUTE RESOLUTION SERVICE

D00021099

Decision of Independent Expert

Tyrrells Potato Crisps Limited

and

Trans LTD

1. The Parties:

Complainant: Tyrrells Potato Crisps Limited
Tyrrells Court, Stretford Bridge
Leominster
Hereford
HR6 9DQ
United Kingdom

Respondent: Trans LTD
Midtown Building, Ste 3
Charlestown
Saint Kitts and Nevis

2. The Domain Name:

tyrellscrisps.co.uk

3. Procedural History:

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.

12 February 2019 Dispute received

1. It was registered in 2011. By then the Complainant had been incorporated for 10 years, the Complainant's UK trade mark had been registered for eight years and its EUTM for nearly seven years. The Complainant's own domain name was registered prior to the Respondent's registration of the Domain Name. The Mark was widely known in the UK by June 2011, in relation to crisps, and had acquired substantial goodwill. There can be no *bona fide* reason why the Respondent would choose to adopt a domain name which consists of a barely perceptible misspelling of the Mark with the word "crisps", the Complainant's main product range. At the time of registration of the Domain Name, the Respondent must have had full knowledge of the Complainant and its Mark.
2. The Domain name has been offered for sale.
3. The Respondent is based in Saint Kitts and Nevis and has not used the Domain Name for any *bona fide* purpose. It appears to be used as a monetised, parked domain name, possibly also with the intention of blocking registration by the Complainant. It is common practice for trade mark owners to register misspellings of their brands and domain names, and the contested domain name would be an obvious choice. The Respondent is not hosting a genuine website nor does it appear to have any intention to do so.
4. Use of the Domain Name infringes the registered rights of the Complainant and confuses 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. An internet user may search "Tyrrells crisps" or "Tyrells crisps" using a search engine and be presented with the Respondent's website and click onto it, mistakenly believing that the web link belongs to, or is in some way connected with the Complainant. Even when it becomes apparent to the Internet user that any website is not connected with the Complainant, the user has been deceived by clicking on or typing in the Domain Name. Such initial interest confusion on the part of the public is enough to constitute abusive use and registration.
5. The Domain Name takes unfair advantage of and/or is detrimental to the Complainant's rights. The fact the Domain Name sometimes re-directs to an unrelated third party website, means that consumers who would otherwise not have gone onto such a site, may then end up making a purchase, which may be to the financial benefit of the Respondent, but certainly not to the Claimant. That purchase would not have occurred had the Respondent not gained the consumer's attention by mis-use of the Brand.

The Respondent

The Respondent did not file a Response.

6. Discussions and Findings

Complainant's Rights

6.1 Under paragraph 2.1 of the Policy the Complainant must prove on the balance of probabilities that:

'2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration.'

Under paragraph 1 of the Policy '*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;*'

- 6.2 The Complainant has uncontested Rights in the Mark both by virtue of its trade mark registrations and as a result of the goodwill and reputation acquired through its use of the Brand over many years. Ignoring the ccTLD suffix ".co.uk" for this purpose, the Domain Name differs from the Mark only by the use of a single letter "r" and by the addition of the word "crisps". In the Expert's view, these differences do not detract from the similarity between the Mark and the Domain Name. Accordingly, the Expert finds that the Complainant has Rights in a mark or name that is similar to the Domain Name.

Abusive Registration

- 6.3 Under paragraph 1 of the Policy '*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. *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;*
Complainant.'

- 6.4 The Domain Name comprises a very slight misspelling of the Mark together with the word "crisps", the primary product of the Complainant. Accordingly, the Expert is in no doubt that the Respondent registered the Domain Name in full knowledge of the Complainant and its Rights in the Mark. In the absence of any explanation to the contrary from the Respondent, the only credible reason for its registration was with a view to taking unfair advantage of the Complainant's Rights in the Mark and to profit from the sale of the Domain Name and/or by its use as a monetised parked domain. This is borne out by the fact that the Domain Name is for sale and is being used to redirect to other sites, presumably for profit.
- 6.5 The Respondent is using the Domain Name to redirect to different commercial sites none of which have any connection with the Complainant. It is thus very likely that the Respondent will benefit financially as a result of customers who would have been looking for the Complainant's website ending up on those 3rd party websites and possibly making a purchase there that they would not otherwise have made. Even when they later realise that any such website is not connected with the Complainant, the user has been deceived by clicking on or typing in the Domain Name. This would amount to initial interest confusion.
- 6.6 Thus, the Expert concludes that the Respondent's use of the Domain Name confuses 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. Accordingly, in all of the circumstances, the Expert finds that the Domain Name has both been registered and used in a manner which takes advantage of and is detrimental to the Rights of the Complainant and is an Abusive Registration in accordance with both limbs of the Policy definition. Thus, the Expert finds that the Domain Name is an Abusive Registration.

7. Decision

Having found that the Complainant has Rights in respect of a mark which is similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert orders that the Domain Name be transferred to the Complainant.

Signed

Dated 21/05/2019

UNSIGNED

G. GRASSIE