

DISPUTE RESOLUTION SERVICE

D00022121

Decision of Independent Expert

LGB Alliance

and

James Billingham

1. The Parties:

Lead Complainant: LGB Alliance
Kemp House
152-160 City Road
London
City of London
EC1V 2NX
United Kingdom

Respondent: James Billingham
114 North Acre
Andover
Hants
SP11 6QX
United Kingdom

2. The Domain Name(s):

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

02 December 2019 12:21 Dispute received
03 December 2019 11:47 Complaint validated
03 December 2019 11:52 Notification of complaint sent to parties
09 December 2019 16:55 Response received
09 December 2019 16:55 Notification of response sent to parties
12 December 2019 01:30 Reply reminder sent
17 December 2019 18:04 No reply received
20 December 2019 10:53 Mediator appointed
31 December 2019 09:56 Mediation started
07 February 2020 14:30 Mediation failed
07 February 2020 14:30 Close of mediation documents sent
19 February 2020 01:30 Complainant full fee reminder sent
24 February 2020 15:07 Expert decision payment received

4. Factual Background

The Complainant, LGB Alliance, was incorporated on 28 November 2019. The Complainant claims unregistered trademark rights in the name 'LGB Alliance' before that date through the use of the domain name <lgballiance.co.uk>, several social media accounts, and a dedicated page on a fundraising website. The Complainant states it publicly announced the formation of its organisation on 22 October 2019.

The Domain Name was registered on 23 October 2019 and currently points to a web page mentioning the words 'TRANS RIGHTS' for a few seconds before redirecting to the website of Stonewall, a lesbian, gay, bisexual and transgender ('LGBT+') rights charity in the United Kingdom.

5. Parties' Contentions

5.1 The Complainant's contentions can be summarised as follows:

- The Complainant is an organisation aiming to protect the rights of lesbian, gay and bisexual ('LGB') persons. The public announcement of the formation of this organization dates from 22 October 2019.

- Although the Complainant's organisation was created recently, it claims that the name 'LGB Alliance' is already a well-established brand.
- the Domain Name is similar to the Complainant's Rights in the name 'LGB Alliance'.
- the Domain Name redirects to digital content that is contrary to the Complainant's purpose and this has been done specifically with the objective to confuse and mislead the Complainant's target audience.
- the Domain Name has been registered to disrupt the Complainant's business.

5.2 The Respondent's contentions can be summarised as follows:

- the Complainant has no registered trademark rights and cannot claim unregistered trademark rights. The Respondent provides a list of Facebook pages and groups using an identical or similar name.
- the Respondent agrees that the digital content linked to the Domain Name is contrary to the Complainant's purpose.
- the Respondent does not contest that he specifically targeted the Complainant's organisation. Respondent states that he "*absolutely did this to criticise their "business"*". According to the Respondent, this is a matter of freedom of speech, even if it does disrupt the Complainant's business.
- the (use of the) Domain Name cannot possibly be confused with the Complainant's business or organisation. According to the Respondent, "*it is clear from the website saying "Trans Rights", and forwarding to Stonewall that this domain has nothing to do with them [the Complainant]."*"

6. Discussions and Findings

Pursuant to paragraph 2 of the Policy a Complainant must show, on the balance of probabilities, that:

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

Rights

'Rights' are defined in the Policy as 'rights enforceable by the Complainant, whether under English law or otherwise, and may include rights and descriptive terms which have acquired a secondary meaning'.

It is well accepted that the question of Rights falls to be considered at the time that the Complainant makes its Complaint and is a test with a low threshold to overcome.

Apart from its registered company name, the Complaint provides evidence of unregistered trademark rights in the name 'LGB Alliance' through the use of the domain name <lgballiance.co.uk>, several social media accounts (Twitter and Facebook) and a dedicated page on a fundraising website.

The Respondent claims that the Complainant's website is pre-dated by a private Facebook group which is also named 'LGB Alliance'. This private group appears to be managed by a third party. It is impossible to determine whether the private Facebook group pre-dates Complainant's website, as the private Facebook group and the domain name <lgballiance.co.uk> linked to the Complainant were registered on the same day, namely 22 September 2019. The Expert observes that the Complainant's Facebook page has more than 4,000 followers, whereas the 'LGB Alliance' group is a private group counting approximately 750 members. The Expert considers that the creation of such private group does not preclude the Complainant from claiming Rights in the name 'LGB Alliance'.

Despite the recent creation of the Complainant's organisation, the Expert observes that there has been a high number of interactions on its social media pages, as well as significant press coverage related to the Complainant's organisation.

The Respondent provides a list of 'similar' Facebook pages or groups, the majority of which use a different name and are thus irrelevant. In the Expert's view, the Respondent failed to show that another entity would be equally linked to the name 'LGB Alliance'.

In addition, the Expert observes that it remains uncontested that the Complainant announced the formation of its organization on 22 October 2019 and that the Domain Name was registered the following day. The Respondent confirms that he targeted the Complainant with the registration of the Domain Name (*"I absolutely did this to criticise their [the Complainant's] "business"*).

Given the above and in view of the specific circumstances of this case, the Expert finds that the Complainant has Rights in respect of the name 'LGB Alliance'.

The Domain Name is identical to this name 'LGB Alliance'. It is well established under the Policy that the first and second level domains may be ignored for the purposes of similarity.

The Complainant has therefore satisfied paragraph 2.1.1 of the Policy and demonstrated that it has Rights in a name or mark which is identical or similar to the Domain Name.

Abusive Registration

Under Paragraph 1 of the Policy, an 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) has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

This definition covers both the time of the registration and later use. It is sufficient to satisfy either of the limbs for there to be a finding of an Abusive Registration.

Under Paragraph 5.1.1.3 of the Policy, circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant can be evidence of an Abusive Registration. Other evidence can include circumstances indicating that the Respondent is using 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 (para 5.1.2 of the Policy).

In the present case, the Respondent does not contest that he specifically targeted the Complainant's organisation. Respondent states that he "*absolutely did this to criticise their "business"*". According to the Respondent, this is a matter of freedom of speech, even if it does disrupt the Complainant's business.

Paragraph 8.2 of the Policy provides that "Fair use may include sites operated solely in tribute to or in criticism of a person or business". However, the consensus view among experts today is that the nature of the domain name is crucial in order to determine fair use. When the domain name is identical to a name in which a complainant has rights, fair use can only be found in exceptional circumstances as this is inherently likely to cause confusion (see Section 4.9 of the Experts' Overview Version 3).

The Respondent claims that no one could be confused by the use of the Domain Name. According to the Respondent, "*it is clear from the website saying "Trans Rights", and forwarding to Stonewall that this domain has nothing to do with them [the Complainant]."*

However, the Expert finds that this does not rule out the so-called 'initial interest confusion', taking place before an Internet user actually gets to the website linked to the Domain Name. As Internet users will commonly visit websites either by way of search engines or by guessing the relevant URL, they will expect that the Domain Name refers to a website "operated or authorised by, or otherwise connected with the Complainant." As confirmed by the overwhelming majority of experts, even if it is immediately apparent to the visitor to the website that the site is not in any way connected with the Complainant, the visitor has already been deceived (see Section 3.3 of the Experts' Overview Version 3).

Under these circumstances, the Expert finds that the Domain Name has been used in a manner which has taken unfair advantage of the Complainant's Rights. The Complainant has therefore, on the balance of probabilities, demonstrated Abusive Registration pursuant to paragraph 2.1.2 of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in a name which is identical to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. Accordingly, the Expert directs that the Domain Name <lgballiance.uk> be transferred to the Complainant.

Flip Petillion

Dated: 18 March 2020