



DISPUTE RESOLUTION SERVICE

D00022827

Decision of Independent Expert

Rightmove Group Limited

and

Mr David Lester

1. The Parties:

Lead Complainant: Rightmove Group Limited
2 Caldecotte Lake Business Park
Caldecotte Lake Drive
Caldecotte
Milton Keynes
Buckinghamshire
MK7 8LE
United Kingdom

Respondent: Mr David Lester
Blackpool
FY1 5FH
United Kingdom

2. The Domain Name:

righttrade.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.

July 14, 2020 Dispute received
July 14, 2020 Complaint validated
July 14, 2020 Notification of complaint sent to parties
July 31, 2020 Response reminder sent
August 5, 2020 No Response Received
August 5, 2020 Notification of no response sent to parties
August 14, 2020 Expert decision payment received

4. Factual Background

RIGHTMOVE is a popular Internet facility that enables commercial and public users to search for information about real estate, including residential property, commercial property, new homes, rentals and overseas property, and to allow users to post stories. The venture was founded in 2000 jointly by the companies Countrywide, Connells, Halifax and Sun Alliance. Currently its website receives in the region of 60 million visits per month. The portal is accessible by computer, iPhone, iPad and Android devices.

The scale of the Complainant is illustrated by its presence in the FTSE 100 index on the London Stock Exchange since 2006 and revenue of £289.3 million in 2019. The Complainant is extensively advertised and its take-up by estate agents, letting agents and new home developers in the UK is high. The Complainant publishes the well-known House Price Index.

The Complainant owns the following trademarks:

RIGHTMOVE, word mark, United Kingdom Intellectual Property Office (UKIPO), registered July 27, 2007, registration number UK00002432055, in classes 9, 35, 36, 38, and 42;

RIGHTMOVE, logo, black with turquoise device, European Union Trademark, registered April 13, 2017, registration number 015568561, in classes 9, 35, 36, 38, 42, and 45.

The Complainant has also adopted in its corporate identity a logo comprising the name RIGHTMOVE in lower case and a highly stylised representation of a pitched roofed building, and has adopted certain specified colours, primarily turquoise.

The Complainant is active on the social media Facebook, Twitter, Instagram, and Pinterest, with tens of thousands of likes or followers.

The Respondent has not provided any factual background. It appears he previously operated the domain name rightmove.trade, registered March 19, 2020, which led to a website headed with the same name, said to provide support services to tradespeople. That domain name was the subject of a cease and desist letter to the Respondent dated May 20, 2020. The corresponding website, with some changes, has recently been redirected to the disputed Domain Name, which was registered on May 20, 2020.

5. Parties' Contentions

Complainant

The Complainant's extensive submissions include the following.

The Complainant submits that it has Rights in respect of the name or trademark RIGHTMOVE and has produced copies of the relevant trademark registration certificates.

The Complainant contends that the disputed Domain Name righttrade.uk is similar to the Complainant's trademark RIGHTMOVE. The prefix term RIGHT creates a strong degree of similarity, and the only other difference is that the string MOV in the Complainant's trademark is replaced with TRAD in the Domain Name.

The Complainant also says the similarity of the Domain Name to its trademark is exacerbated by elements of the layout and use of the Complainant's colours in the Respondent's website.

The Complainant further contends that the Domain Name, in the hands of the Respondent, is an Abusive Registration in the terms of paragraph 5.1.2 of the Policy. A history is presented of the Respondent having registered the Domain Name on May 20, 2020, being the day he received a cease and desist letter from the Complainant about the Respondent's previous domain name rightmove.trade, which now redirects visitors to the disputed Domain Name. The Respondent also changed the title appearing on the previous website from "Rightmove Trade" to "RightTrade". The Respondent has intended to use the website of the Domain Name to pass-off as the Complainant, including by posting blog contributions apparently authored by the Complainant, by the inclusion of links to the Complainant's websites, by the use of layout and appearance similar to the Complainant's websites, and by extending its content into matters of real estate.

The Complainant says the Respondent has demonstrated that he must have been aware of the Complainant and its trademark. The Respondent has introduced the Domain Name to replace the rightmove.trade website, with minimal changes. The Respondent's website includes similarities including the Complainant's characteristic turquoise colour scheme and the appearance and positioning of its hyperlinks. The Complainant submits that the mimicking of another's website by the use of similar layout, colours, and "look and feel", may be indicative of abusive registration. There is substantial overlap between the Complainant's business related to real estate, and the Respondent's focus on tradespeople, many of which offer home improvement work.

The Complainant says when it searched Google for "righttrade uk" or "righttrade.uk" it revealed "widespread" use of the RIGHTMOVE trademark, and has appended screen captures showing two results in which the website found is the Domain Name; one has below the Domain Name the heading "Rightmove" and the other is headed "UK Home Solutions Ltd - Rightmove Trade".

The Complainant has appended a volume of correspondence in which companies have checked whether an approach from Rightmove Trade was an approach from the Complainant, and have been informed that it was not. The approaches emanated from the address at the Respondent's other domain name rightmove.trade. In one instance, the email (in what appears to be a display attachment) was headed "Welcome to Rightmove Trade, the UK's fastest growing online trade directory". The recipient was offered a six month trial listing for £99 (usual cost £594) with an alternative 12-month option. The Complainant says there has been actual confusion of visitors to the rightmove.trade website, and that essentially the same website has now been migrated to the Domain Name.

Respondent

The Respondent has made no formal Response to the Complaint.

6. Discussions and Findings

Under paragraph 2.1 of the Policy the Complainant has the onus of proving, 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.”

Complainant’s Rights

Paragraph 1 of the Policy defines rights as follows:

“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.”

The Expert is satisfied by the evidence produced that the Complainant has rights in the trademark RIGHTMOVE as required under paragraph 2.1.1 of the Policy.

Similarity to a Name or Trademark

The Complainant must prove on the balance of probabilities that the Domain Name righttrade.uk is similar to the trademark RIGHTMOVE. Clearly they are not identical.

The Complainant’s trademark reads as the two common English dictionary words “right” and “move”. The prefix “right”, in the context, conveys no specificity. It is in the nature of perhaps an eye-catcher, a filler, a gimmick, in that the word “move” standing alone would be meaningless, whereas the conjugation of “right” and “move” does make for a trademark in the modern style. The word “right”, in general, might be intended to signal to a consumer, faced with a plethora of choice on the Internet, that a particular supplier of goods or services is the “right” source.

The synthesis of trademarks with snappy prefixes such as “right”, “my”, “your”, *etc.*, which might be meaningless standing alone, is fashionable. In accordance with paragraph 18.1 of the Policy, the Expert “may (in their entire discretion) check any material which is generally available in the public domain”. A simple check of the UKIPO for trademarks beginning with the word “right” yielded a raw count of 566 (including replicates), of which 444 were live, 22 belonging to the Complainant. Omitting constructs containing the plural “rights”, trademarks with a space after the word “right” and then other words, the trademark RIGHT standing alone, and trademarks containing non-alphanumeric symbols, in other words sticking strictly to the format RIGHT[word], sampling just the first 50 trademarks on the live list revealed 15 (30%) in that format: RIGHTPAGES, RIGHTBANK, RIGHTFAX, RIGHTWAVE, RIGHTV, RIGHTNOW, Rightest, RIGHTPATH, RIGHTSOURCE, RightLeft, RIGHTBASE, RIGHTDOCS, RightTemp, RIGHTLIGHT, and RIGHTSOUND.

The word “move” is the more specific part of the Complainant’s trademark. RIGHTMOVE might evoke indoor or outdoor games, dance, investment, career change, emigration, or a multitude of other things, however in the Complainant’s business it refers to real estate.

Paragraph 2.1.1 of the Policy mandates a narrow focus on the question of whether “a name or mark ... is identical or similar to the Domain Name”. Except in certain marginal circumstances, considerations of the Respondent’s conduct, or even of the relative registration dates of the domain name and the trademark, do not impinge on the question of similarity or otherwise. Disregarding the technically necessary country code “.uk”, the question is, are the Domain Name “righttrade” and the trademark RIGHTMOVE similar?

The Complainant draws attention to a “conceptual similarity” between the words “trade” and “move”; says the “only difference” is that the letters “trad” have replaced the letters “mov”; and says in respect of the prefix “right” that “the prominent feature of both terms is shared identically”.

The Expert finds no evidence to support a “conceptual similarity” between the words “trade” and “move”, even if traders do work on property, and finds any alleged similarity imperceptible. The “only difference” between the trademark and the Domain Name is not, as the Complainant suggests, the mere replacement of the letters “mov” with “trad”, but on the facts, is the more sweeping replacement of the operative word “move” with the different operative word “trade”. The Expert does not accept that the word “right” is “the prominent feature of both terms”. On the contrary, the prominent features (insofar as they have much prominence) are the words “move” and “trade”. The Complainant expects an objective comparison to be made of the Domain Name with the trademark. In the Expert’s objective comparison the words “trade” and “move” are dissimilar and the word “right”, a mere figment of trademark idiom, plays no significant part.

The Complainant quotes from the Experts’ Overview, version 3, at section 2.3: “the first hurdle (*i.e.* proving the existence of rights in a relevant name or mark) is intended to be a relatively low-level test. Issues relating to confusion are best addressed under the second hurdle. The objective behind the first hurdle is simply to demonstrate a *bona fide* basis for making the complaint”.

That is so and the first hurdle is indeed a modest one, but it is not non-existent, and a boundary between what is similar and what is not may depend on an assessment of the facts. For instance in *Novatus Ltd. v. Mr Andy Mitchell*, DRS 15408, the respective expert found the domain name edinburghpowerflush.co.uk to be “just about” similar to the trademarks THE POWERFLUSH ASSOCIATION and STANDARD POWERFLUSH, and found the domain name scottishpowerflushassociation.co.uk to be similar to the first of those trademarks; but he found the domain name centralflush.co.uk to be not similar to either trademark within the meaning of the Policy.

On the evidence and on the balance of probabilities, the Expert finds the Domain Name righttrade.uk to be dissimilar to the Complainant’s trademark RIGHTMOVE within the meaning of paragraph 2.1.1 of the Policy and the Complaint must fail at the first hurdle.

Abusive Registration

The Complainant has advanced various details of its grounds for complaint, including appropriation of the Complainant’s leading turquoise colour exactly, some of the Respondent’s layout and content, the targeting of the Complainant and redirection to the Complainant’s website, and history relating to the domain name rightmove.trade (which last does not directly concern the DRS). But having failed the first hurdle, the case cannot proceed. To allow so would be tantamount to abolishing the relevant requirement under paragraph 2.1.1 of the Policy and hearing stand-alone complaints of trademark infringement or passing-off, which are outside the remit of the DRS.

As expressed by the respective expert in the 2008 case of *London Metropolitan University v Bob Woods*, DRS 05407: “For the foregoing reason the Complaint must fall at the first hurdle of Rights and the question of the second hurdle of Abusive Registration does not arise. There may be very good reasons for the Domain Name to be cancelled or the website suspended. However, in my view they are not within the ambit of the Policy. The Domain Name may be, in layman’s terms, an ‘abusive registration’. But the Policy is only directed to Abusive Registrations as defined, where the Complainant can demonstrate Rights in respect of a name or mark which is identical or similar to the Domain Name”.

If the Complainant considers it has a *bona fide* basis for making a complaint, then that belongs in another forum and it would be inappropriate for the Expert to comment pre-emptively on the strengths or otherwise of the Complainant’s position. The present Complaint before the DRS must be dismissed.

7. Decision

For the foregoing reasons, the Complaint is denied.

Signed Clive Trotman

Dated September 4, 2020