

DISPUTE RESOLUTION SERVICE

D00022970

Decision of Independent Expert

Seedlip Limited

and

Mr Reynald Grattagliano

1. The Domain Name(s):

Complainant: Seedlip Limited
Suites 5 & 6 Woodlands Court, Burnham Road
Beaconsfield
Buckinghamshire
HP9 2SF
United Kingdom

Respondent: Mr Reynald Grattagliano
Grand Cayman
KY1-1102
Cayman Islands

2. The Domain Name(s):

seedlip.co.uk
seedlipdrinks.co.uk

3. Procedural Matters:

- 3.1. 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.
- 3.2. The dispute was received on 2 September 2020, and subsequently validated and notified to the parties on 4 September 2020. A response was received and notified to the parties on 28 September 2020. A reply was received and notified to the parties on 5 October 2020. A Mediator was appointed on 5 October 2020 and mediation commenced two days later. Mediation failed on 7 October 2020. Expert decision payment was received on 9 October 2020.
- 3.3. I am satisfied that the complaint was served upon the Respondent in accordance with paragraphs 3 and 6 of the Nominet Dispute Resolution Service Policy ('the Policy').

4. Factual Background

- 4.1. The Complainant is a producer of non-alcoholic spirits, which it markets and sells under the name "seedlip". It was incorporated on 6 May 2014, under the name "Seedlip Limited". It registered the (non-disputed) domain name <seedlipdrinks.com> on 22 June 2014 and the EU trademark "SEEDLIP" on 8 October 2014 (in class 32: non-alcoholic beverages; waters; flavoured waters). The Complainant's first drink, branded "Spice 94", was launched to market in 2015. The Complainant currently produces three blends: "Spice 94", "Garden 108" and "Grove 42".
- 4.2. Documentation annexed to the complaint (all of which is from publicly available sources) suggests that the Complainant's products have enjoyed a substantial degree of commercial and critical success. They are served in over 6,000 venues across the world, including in over 250 Michelin-starred restaurants. In 2019, a majority stake in the Complainant was acquired by industry giant Diageo Plc.
- 4.3. The Respondent is an entrepreneur, scientist and founder of Arkay Beverages ("Arkay"), a competitor of the Complainant. The Respondent claims that Arkay was the first company ever to have produced a non-alcoholic spirit. The Respondent registered the disputed domain names <seedlip.co.uk> and <seedlipdrinks.co.uk> ('the Disputed Names') on 9 April 2017. Both Disputed Names host websites that the Respondent describes in its Response as '*a service of providing information with regard to the alcohol free spirit market and products to include Gin, the Seedlip basket and the success of alcohol free products*'.

5. Parties' Contentions

Complainant

- 5.1. The Complainant submits that it has Rights in the Disputed Names by reason of, amongst other things, (i) its company name, (ii) its proprietorship and use of the EU trade mark "SEEDLIP", (iii) proprietorship of trade mark registrations for "SEEDLIP" in other jurisdictions (albeit evidence of such marks, whilst offered, has not been provided), and (iv) continuous use of the domain name <seedlipdrinks.com> since June 2016. The Complainant also contends that it that it has an established reputation – using the names "seedlip" for the product and "seedlip drinks" for the company – as one of the pioneers in the non-alcoholic spirits world. In support of that contention, the Complainant cites a number of articles (including one in the Good Food section of the BBC website), a high Google results ranking in response to the search phrase "non-alcoholic spirit", wide availability of its Seedlip products in stores (including from UK household name suppliers such as Sainsbury's, Amazon, Tesco, Waitrose and Holland & Barrett), wide availability of its Seedlip products in venues, and a substantial social media following. The Complainant states that it achieved revenues of £28.5 million in the period from 1 January 2015 to 30 June 2020 and that over the same period it has spent around £14.5 million on advertising the Seedlip brand.
- 5.2. The Complainant argues that the Disputed Names are an Abusive Registration in the hands of the Respondent, in essence because:
 - 5.2.1. The reputation of the Complainant is likely to lead to the Disputed Names having a higher number of visitors than would otherwise be the case.
 - 5.2.2. Consumers searching for the Complainant's products would be likely to stumble across the Disputed Names owing to (i) the Complainant's own website and the Disputed Name <seedlipdrinks.co.uk> being an exact match, differing only by the suffix (.com vs .co.uk), and (ii) the Disputed Name <seedlip.co.uk> being identical to the registered mark "SEEDLIP". That is a recipe for initial interest confusion.
 - 5.2.3. The subject matter of both Disputed Names is the non-alcoholic drinks market, and the websites hosted on each give undue prominence and provide links to the Respondent's (competing) Arkay brand, giving Arkay an undue advantage to the Complainant's detriment.
 - 5.2.4. Alternatively, the registrations are in effect "blocking registrations", as the Respondent must have been aware of the Complainant's brand.
- 5.3. The Complainant also seeks to rely on paragraph 5.1.3 of the DRS Policy, arguing that a pattern of abusive behaviour can be seen, the Respondent

having registered other domain names of well-known trademarks and similarly misused them.

Respondent

- 5.4. The Respondent denies that the Complainant has Rights in the Disputed Names. He accepts that the Complainant has rights in the mark “SEEDLIP” but contends that those rights are limited, relating only to non-alcoholic beverages, waters and flavoured waters. He contends that the word “seedlip” is generic and descriptive, being merely a word meaning ‘*a basket holding seeds that are to be sown*’ and that he is entitled to make fair use of that word. The Disputed Names are said to be short, memorable and thus useful given the Respondent’s activities.
- 5.5. The Respondent also denies that the Disputed Names will allow his websites to attract a higher number of visitors than they otherwise would owing to the reputation of the Complainant; he contends that a consumer searching for the Complainant’s products would not try the URL of the Disputed Domains or search for “seedlip” but would rather search for the Complainant’s individual product names (e.g. “Spice 94”).
- 5.6. On the issue of whether the Disputed Names are Abusive Registrations, the Respondent points to his own credentials as a scientist and inventor of non-alcoholic spirits, the long association that he and his family have had with such products, and the aim of the project for which the Disputed Names are being used, which is said to be for the Respondent to inform and to share his passion for non-alcoholic spirits with the world. In that context, he advances, in essence, the following arguments:
 - 5.6.1. In *Deutsche Telekom AG v Lammatara Multiserve Ltd* (DRS 95856), the Appeal Panel held that Abusive Registration connotes culpable behaviour akin to knowing wrongdoing, and the Respondent does not fall into that category: the Disputed Names are being used for the Respondent’s legitimate project; they have never been offered for sale to a third party; they do not generate revenue.
 - 5.6.2. The Disputed Names do not fall into any of the categories of Abusive Registration set out in the DRS policy because they were neither registered for the purpose of selling, renting or transferring for excess consideration, nor as a blocking registration, nor for the purposes of unfairly disrupting the Complainant’s business.
 - 5.6.3. There is no evidence that the Disputed Names have been acquired primarily for the purposes of unfairly disrupting the Complainant’s business. On the contrary, a page on <seedlipdrinks.co.uk> provides details about the Complainant’s products. The Respondent does not seek to sell anything through the Disputed Names, and he would like

to see the Complainant enjoy the success that increased market awareness through the Disputed Names aims to bring.

- 5.6.4. The registrations cannot be considered blocking registrations in light of the guidance in *Peoplesoft UK Ltd v KL Kane* (DRS 00120) unless the Complainant can establish that the Respondent's principal objective in registering them was to prevent the Complainant from doing so. The Disputed Names were not registered to prevent the Complainant from registering them; indeed the Complainant has at all times been of the opinion that a party would be unable to claim rights '*in such a generic and descriptive term*' as "seedlip". The Respondent also cites *Thomas Cook UK Ltd v Whitley Bay Uncovered* (DRS 00583) and *Delamar Academy v Go-Catch Media Ltd* (DRS 01543).
- 5.6.5. The Respondent has never expressly or by implication indicated a relationship to the Complainant and has never intended to confuse consumers. Moreover, there is no evidence that consumers have in fact been confused. The websites state on their face that they provide '*everything you need to know about Gin and Spirits Alternatives*' and provide information relating to them, so there can be no question of any confusion arising.
- 5.6.6. The Respondent is afforded a defence by virtue of paragraph 8.1.1.1 of the Policy, because before being aware of the Complainant's cause for complaint he was using the Disputed Names in connection with a genuine offer of services, namely the service of providing information about the alcohol-free spirits market and setting out the history of gin and non-alcoholic alternatives.
- 5.7. The Respondent contends that the allegations of disrupting or seeking to disrupt the Complainant's business are serious ones, that '*these serious allegations require substantial evidence in support*', and that no such substantial evidence has been adduced.

6. Discussions and Findings

- 6.1. In order to succeed in its complaint in relation to a Disputed Name, the Complainant must prove on the balance of probabilities that (i) it has Rights in respect of a name or mark which is identical or similar to that Disputed Name; and (ii) that Disputed Name, in the hands of the Respondent, is an Abusive Registration (paragraph 2 of the Policy).

Rights

- 6.2. The Policy defines Rights as *'rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning'*.
- 6.3. As the registered proprietor of the EU trade mark "SEEDLIP", the Complainant has enforceable rights in the name "seedlip" and thus to a name or mark which is identical to one of the Disputed Names (<seedlip.co.uk>). Although the Respondent is correct that those rights relate only to Class 32 and are in that sense limited, that limitation has no bearing on whether Rights subsist for the purposes of the Policy. It may in principle have a bearing on the question of whether there is an Abusive Registration but, given that Class 32 is defined as *'non-alcoholic beverages; waters; flavoured waters'*, this is not a case where the Respondent can establish that such Rights as the Complainant holds are irrelevant to the use being made of the Disputed Names.
- 6.4. I accept the Respondent's evidence that "seedlip" is a recognised word in the English language that means *'a basket holding seeds that are to be sown'*. However, I consider that it is a somewhat obscure word that is unlikely to be familiar to the majority of consumers seeking out non-alcoholic spirit alternatives. I do not accept the Respondent's un-evidenced submission that "seedlip" is a *'common'* word.
- 6.5. Moreover, the Complainant has provided ample evidence that the Complainant has built up considerable goodwill in relation to the word "seedlip" and that it has acquired a secondary meaning. Such evidence includes printouts of (i) articles and press reports using "seedlip" as a reference to the Complainant's drinks, (ii) the get-up of the Complainant's cans and bottles, on which the word "seedlip" is prominently displayed (with the individual product name, such as "Garden 108", printed in rather smaller letters); (iii) the Complainant's Facebook page, which refers to the company as "Seedlip Drinks" but the product as "Seedlip", and has over 42,000 followers; (iv) the Complainant's Instagram page, which presents numerous photographs of cans of "seedlip", and which has over 100,000 followers; (v) the Complainant's twitter feed, which uses the display name "Seedlip", and has over 7,000 followers; and (vi) the Complainant's LinkedIn page, named "seedlip".
- 6.6. I note that as of today's date, the first 10 pages of results from a search for "seedlip" on Google's UK website consist solely of references to the Complainant and to the Complainant's products; not a single search result on those 10 pages relates to use of the word "seedlip" in any other context. Although not determinative, this seems to me to add further support to the Complainant's case that the word has acquired a secondary meaning, and confirms my view that the secondary meaning is, if anything, likely to have displaced the dictionary meaning in the mind of the average consumer.

- 6.7. The Disputed Name <seedlipdrinks.co.uk> is identical to the non-disputed domain name <seedlipdrinks.com> that has been used by the Complainant for its website since 2016. Moreover, it is evident from the evidence referred to in paragraph 6.5 above that the Complainant has generated considerable goodwill not only in the word “seedlip” (that word having acquired a secondary meaning in addition to being a registered mark) but also in the concatenation “seedlipdrinks”. Such concatenation is used not only for the Complainant’s website but also as its Twitter handle (“@seedlipdrinks”), its Instagram account name (“seedlipdrinks”) and its Facebook account name (“@seedlipdrinks”). The Complainant is referred to in articles, on its website and on its social media pages as Seedlip Drinks.
- 6.8. For these reasons, I am satisfied that the Complainant has Rights in relation to a name identical to the Disputed Name <seedlip.co.uk> and to the Disputed Name <seedlipdrinks.co.uk>.
- 6.9. The Respondent asserts in the context of Rights that he is entitled to make fair use of “seedlip” as a short, memorable and useful word. For reasons set out above, I reject the contention that the word is merely generic and descriptive; it has acquired a secondary meaning. The issue of fair use is not relevant to the question of whether the Complainant has Rights but rather pertains to the question of whether the registration is abusive. I consider it in that context below.

Abusive Registration

- 6.10. The DRS 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. 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*’
- 6.11. I am prepared to accept the Respondent’s submission that he is passionate about non-alcoholic spirits and the distillation processes by which they are made; and that he has a desire to share that passion and educate consumers about the market through his websites. However, the existence of such a passion and desire is not the yardstick by which an Abusive Registration is to be judged. I agree with the Complainant that the question is not whether the Respondent should be permitted to publish his websites, but whether he should be permitted to do so using the Disputed Names.
- 6.12. Before addressing the issue of whether the Disputed Names are Abusive Registrations in the hands of the Respondent, it is necessary to say something about the websites that the Respondent hosts on them.
- 6.13. According to the Complainant’s submissions and exhibits:

- 6.13.1. The Disputed Name <seedlip.co.uk> hosts a web page whose title is 'Alcohol Alternative market is booming', under which is the following text: *'The Alcohol-free, Alcohol Alternative market is booming with products like Ben's today. // These product[s] each have a single source that entered the market almost a decade ago when Reynald Grattagliano, introduced the world to the first Alcohol-Free Spirit company Arkay Beverages'*. Reynald Grattagliano is the Respondent. It is evident that the reference to 'Ben' is to Ben Branson, founder of the Complainant. Below the text are two pictures, one of the Respondent and one of Mr Branson. Below the picture of the Respondent is the caption *'Reynald Grattagliano, introduced the world to the first Alcohol Free Spirit company Arkay Beverages'*. Below the picture of Mr Branson is the caption *'Branson is the man behind the distillate line Seedlip'*. The web page contains clickable links to the Respondent's own website and to that of Arkay.
- 6.13.2. The Disputed Name <seedlipdrinks.co.uk> hosts a website entitled *'SEEDLIP DRINKS – Everything you need to know about Gin and Spirits Alternatives'*. Its homepage contains little beyond a "Click here" button and a "contact" link. The latter directs to an email address at Arkaydrinks.com. The former leads to a page which contains: (i) a definition of seedlip; (ii) a lengthy narrative entitled *'The Complete and Slightly Insane History of Gin in England and Alternatives'*, (iii) a section headed *'Gins Alternatives'*, and (iv) a list of *'Gins to try 2020'*.
- 6.13.3. The *'Gins Alternatives'* section has two sub-sections, one headed *'2011 Arkay Beverages World's first gin alternative'* and the other headed *'2014 Seedlip Drinks'*. The former extols the virtues of Arkay's gin alternative. The latter starts by focussing on the acquisition of the Complainant by Diageo, and then goes on to describe the Seedlip manufacturing process, to assert that the process prevents extraction of all of the alcohol and to warn that Seedlip's drinks *'may not be suitable for Teetotalers or pregnant women'*.
- 6.13.4. The definition of "Seedlip" given on the website is: *'dialectal, chiefly England- basket or other container in which seed as per example juniper berry seeds to be sowed broadcast is carried. The bluish one of a common juniper (J. communis) which is used to flavor foods and from which is obtained an acid essential oil used especially as a flavoring in gin and liqueurs...'*
- 6.13.5. Apart from providing a definition of the word "seedlip" as set out above, neither website uses the word "seedlip" to refer to anything other than the Complainant's products.

6.14. The Response does not allege that the Complainant mis-describes its websites or that the screenshots that it exhibits are inaccurate. Accordingly, I proceed on the basis that the websites are as the Complainant describes them. On that basis, I now turn to consider whether the Disputed Names, in the hands of the Respondent, are abusive.

6.15. Under paragraph 5.1.2 of the DRS Policy, one of the factors that may indicate an Abusive Registration is *'Circumstances indicated 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'*. That factor seems to me to apply here in relation to both of the Disputed Names, for the following reasons:

6.15.1. My finding that the word "seedlip" has acquired a prominent secondary meaning, and that the primary (i.e. dictionary) meaning of the word is obscure, inevitably leads to a conclusion that, on the balance of probabilities, consumers are likely to be confused into believing that the Disputed Name <seedlip.co.uk> is registered to, operated or authorised by, or otherwise connected with the Complainant. My finding that the Complainant enjoys considerable goodwill in relation to the non-disputed domain name <seedlipdrinks.com> inevitably leads to a conclusion that, on the balance of probabilities, consumers are likely to be confused into believing that the Disputed Name <seedlipdrinks.co.uk> is also registered to, operated or authorised by, or otherwise connected with the Complainant. In both cases, the confusion arises because a consumer trying to find the Complainant's own website would be very likely to guess the URL associated with one of the Disputed Names and would thereby be taken to a website devoted to non-alcoholic spirits, which would in turn likely give rise to confirmation bias.

6.15.2. It may well be that, having read the websites and seen what they say about Seedlip and Arkay, consumers would come to appreciate that the sites are not connected with the Complainant after all. But by then the damage will have been done: the Respondent will have diverted the consumer and thereby taken unfair advantage of the Complainant's goodwill.

6.15.3. The Respondent submits that the confusion identified above would not arise because a consumer searching online for the Complainant's products would use the Complainant's individual product names (e.g. "Spice 94") as search terms. No evidence has been adduced in support of that submission, and I agree with the Complainant that it is unlikely: the brand "Seedlip" is prominent on the Complainant's website and social media pages; it appears more prominently than the individual product names on the get-up of many (if not all) of the

Complainant's cans and bottles; and is the primary name used to refer to the Complainant's products in the press articles that have been adduced into evidence.

- 6.16. The likelihood of confusion does not necessarily, of itself, give rise to a finding of Abusive Registration. Here, however, there is a further factor that needs to be taken into account. The Respondent argues that his use of the Disputed Names is non-commercial and that no advantage is being taken. I do not accept that. Whilst the websites hosted on the Disputed Names may be non-commercial in the narrow sense that they do not directly sell products, both of them have commercial impact in the broader sense: they give preferential treatment to Arkay, a competitor of the Complainant. That preferential treatment consists of (i) links to Arkay's website and to the Respondent's related website and, (ii) in the case of <seedlipdrinks.co.uk>, the glowing write-up given to Arkay, which is to be compared to the warning and implied criticism of Seedlip's products on that website. The existence and content of the websites hosted on the Disputed Names, coupled with the likelihood of confusion in the mind of the consumer, gives rise to an obvious risk of sales being diverted from the Complainant to Arkay, resulting in both advantage to the Respondent (albeit indirectly) and detriment to the Complainant. In my view, these combined circumstances amount to the use of the Disputed Names in a manner that takes unfair advantage of and is unfairly detrimental to the Complainant's Rights. On both bases the registrations are abusive.
- 6.17. Further, the Respondent is, by his own account, a highly knowledgeable specialist in the non-alcoholic drinks world; indeed, it is his specialist knowledge that he professes a desire to share by means of his websites. That being so, it seems to me inconceivable that at the time he registered the Disputed Names he was unaware (i) of the association between the Complainant and the word "seedlip" and (ii) of the Complainant's website hosted at the non-disputed domain <seedlipdrinks.com>. Indeed, the Response does not suggest otherwise. That being so, it is difficult to avoid the inference that the registration was intended to capitalise on that association and generate the confusion that is the very mischief identified in paragraph 5.1.2 of the DRS Policy. If that was not the intention the registration must, on the balance of probabilities, be a blocking registration. In either case, that would amount to Abusive Registration under the first limb of the test under paragraph 2 of the Policy.
- 6.18. The Respondent argues that his use of the word "seedlip" is fair use of a generic and descriptive term and that he registered the Disputed Names for the proper purpose of furthering his project to educate consumers and share his passion for non-alcoholic spirits. However, that argument suffers from two insurmountable difficulties which cause me to reject it.
- 6.19. First, even if it were to be assumed that "seedlip" was a word in common use (a proposition I do not accept), the link between that word and the

Respondent's project is impossible to fathom. It is true that gin is made with juniper berries and that juniper berries have seeds; but so too do all other berries, all fruits and a great many crops. Many of those are sown. I have seen no evidence to suggest any actual link between "seedlip" and gin (or any other spirits), let alone non-alcoholic gin, other than the Complainant and its products. In this regard, I note that the definition of "seedlip" given on the website at the Disputed Name <seedlip.co.uk> differs from the dictionary definition precisely by seeking to link the word with juniper berries (albeit even there only by way of example). Neither the Collins dictionary definition upon which the Respondent relies nor any other definition that I have been able to find makes any mention of juniper berries. A seedlip is simply a basket for carrying seeds to be sown.

6.20. The Complainant observes that even on the Respondent's own websites hosted on the Disputed Names, the word "seedlip" is only actually used to refer to the Complainant's products (setting aside the definition given on <seedlipdrinks.co.uk>). This strongly suggests that there is nothing in the Respondent's argument that its use of "seedlip" is a fair one that does not seek to take advantage of or do detriment to the Complainant's Rights.

6.21. Secondly, the Complainant has adduced evidence with its Reply of previous versions of the Respondent's websites which expressly compared the Complainant's products with those of Arkay and a third brand, Whissin. Those comparisons were not the sort of objective comparisons that would be expected if the Respondent was indeed – as he contends – seeking merely to educate consumers and share his passion. Rather, the comparisons were subjective and pejorative of the Complainant's products (and indeed those of Whissin) while being highly complimentary about the Arkay products. One quote relied on by the Complainant sufficiently illustrates the point: *'Your decision [as to which brand to buy] will depend whether you want to drink a beverage for kids like Whissin or a drink taking [sic] nothing like real gin, vodka, rum, whisky called Seedlip, but if you want to drink an alcohol liquor identical in kick taste to gin, vodka, rum, whisky you can select Arkay'*.

6.22. To use the Disputed Names to host such material, as the Respondent did, is to use them in a manner which takes unfair advantage of (by promoting Arkay) and is unfairly detrimental to (by making prejudicial comments about Seedlip) the Complainant's Rights. Even though the websites no longer host such material, and the promotion of Arkay at the expense of the Complainant's products is now more subtle, the fact that the Respondent has used the Disputed Names to host the earlier material satisfies me that the Disputed Names, in the hands of the Respondent, are Abusive Registrations.

6.23. As to the points raised in the Response that I have not already addressed:

6.23.1. It is said that the Appeal Panel held in *Deutsche Telekom AG v Lammatara Multiserve Ltd* (DRS 95856) that it considered Abusive

Registration to connote culpable behaviour akin to knowing wrongdoing. I agree. However, in my view the level of culpability required is not great – it is not, for example, akin to fraud. I consider that registering the Disputed Names in the full knowledge of the Complainant, of its use of the word “seedlip” and of its use of the non-disputed domain name <seedlipdrinks.com> amounted to sufficient wrongdoing to amount to abuse in the absence of compelling justification.

- 6.23.2. The Respondent’s contention that the registrations are not abusive because the Disputed Names were neither registered for the purpose of selling, renting or transferring for excess consideration, nor as a blocking registration, nor for the purposes of unfairly disrupting the Complainant’s business takes an unduly narrow approach to the relevant test. The Respondent has paraphrased the matters listed in paragraph 5.1.1 of the Policy as exemplar indicators of an Abusive Registration. Those are not the only indicators upon which a complainant is entitled to rely to establish abuse, and they are not the ones on which the Complainant in this case has primarily relied. The test, unfettered by the examples in paragraph 5.1.1, is that set out in paragraph 6.10 above.
- 6.23.3. The Respondent asserts that there can be no finding of a blocking registration where the Respondent was at all times of the opinion that a party would be unable to claim rights ‘*in such a generic and descriptive term*’ as “seedlip” and believed he was therefore free to register the domains. I do not accept that contention for reasons addressed above. In any event, the Complainant’s primary case is not that the registration was a blocking registration but that it was abusive by reason of the confusion that it is likely to cause. I accept that case. As set out in paragraph 6.17 above, it is only if the Respondent’s intention was *not* to create such confusion that an inference arises that the registration was a blocking registration.
- 6.23.4. The Respondent’s argument that he never expressly or by implication indicated a relationship to the Complainant and has never intended to confuse consumers misses the point: it is the Disputed Domains themselves, being identical to (in one case) the Complainant’s mark and (in the other case) the Complainant’s domain name that cause the confusion. The use to which the Respondent has put the Disputed Names renders that confusion abusive.
- 6.23.5. The Respondent’s reliance on paragraph 8.1.1.1 of the Policy falls away once it is appreciated that the Respondent must have been aware of the Complainant’s mark and website and the Complainant’s cause for complaint when he registered the Disputed Names.

6.24. Accordingly, I accept the Complainant's submission that the Disputed Names are both Abusive Registrations in the hands of the Respondent.

6.25. In addition to its case addressed above, the Complainant seeks to rely on paragraph 5.1.3 of the Policy and to establish that the Respondent is engaged in a pattern of registering domains corresponding to well-known names or trademarks in which the Respondent has no apparent rights. The Complainant relies on the domain name whissin.com, which hosts a website that self-describes as a '*Whissin official website*' but nonetheless contains links to the Arkay website. I agree with the Complainant that the get-up of the whissin.com website is in some ways similar to that of the Disputed Names, and the manner in which it links to Arkay is also similar. However, the Complainant has not adduced sufficient evidence to establish on the balance of probabilities that it is the Respondent who registered the whissin.com site, and I make no finding in that regard.

7. Decision

7.1. I find that the Complainant has Rights in respect of a name or mark which is identical or similar to each of the Disputed Names and that each of the Disputed Names in the hands of the Respondent is an Abusive Registration. Accordingly, I direct that the Disputed Names <seedlip.co.uk> and <seedlipdrinks.co.uk> should be transferred to the Complainant.

Signed MATTHEW LAVY

Dated 2 November 2020