

DISPUTE RESOLUTION SERVICE

D00023003

Decision of Independent Expert (Summary Decision)

Smiths Motor Group (F.P. Smith Holdings Ltd.)

and

Mr Evan Drew

1. The Parties:

Complainant: Smiths Motor Group (F.P. Smith Holdings Ltd.)
Smiths Motor Group
Sturrock Way
Bretton
Peterborough
Cambridgeshire
PE3 8YL
United Kingdom

Respondent: Mr Evan Drew
Maryland
United States

2. The Domain Name:

<smithmotorsgroup.co.uk> (“the Domain Name”)

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with section 3 and 6 of the Policy.

Yes

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

Yes

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name smithmotorsgroup.co.uk is an abusive registration

Yes

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes

7. Comments (optional)

I feel compelled to explain my reasoning given the paucity of evidence supplied by the Complainant.

The Complainant asserts that the Respondent registered the Domain Name for the purpose for which he is using it, namely to impersonate the Complainant. The first thing that a complainant is required to demonstrate under the Policy is that the complainant has rights in respect of a name or mark identical or similar to the Domain Name. The Complainant merely states that the Domain Name is almost identical to the domain name to which its website is connected and that it is also very similar to its own trading name. No evidence has been filed to show that the Complainant has legally enforceable rights in respect of those names.

However, the Complainant has produced an email, which appears to have been sent by someone using the Domain Name for an email address and the email features the Complainant's trading name and an address of one of the Complainant's dealership locations. The sender of the email was familiar with the business of the Complainant. The Expert finds it more probable than not that the email was sent by or on behalf of the registrant of the Domain Name, the Respondent. In sending the email the Respondent plainly recognized the reputation and goodwill associated with the Complainant's trading name. The Expert finds on the balance of probabilities that the Complainant has common law rights in respect of its trading name.

The nature of the email and the use of a domain name, which differs by one letter from, but looks substantially identical to, the trading name and domain name of the Complainant (the company whose name and address is used in the email) leads the Expert to conclude that the Complainant is correct in asserting that the Domain Name was registered without the authority of the Complainant, but with knowledge of the Complainant's rights and with intent to impersonate the Complainant for a nefarious purpose.

The Expert concludes that the Respondent failed to respond to the Complaint, because he has no answer to the Complainant's allegations.

The Expert finds that the Domain Name is an Abusive Registration within the meaning of that term as set out in paragraph 1 of the Policy

8. Decision

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the domain name will therefore be transferred to the Complainant.

Signed: TONY WILLOUGHBY

Dated: 21.10.2020