

DISPUTE RESOLUTION SERVICE

D00008956

Decision of Independent Expert

Copart UK Limited

and

“DMS”

1. The Parties:

Lead Complainant: Copart UK Limited
Acrey Fields, Woburn Road
Wootton
Bedfordshire
MK43 9EJ
United Kingdom

Second Complainant: Copart Inc.
4665 Business Center Drive
Fairfield
United States

Respondent: “DMS”
Bentley Moor Lane
Adwick-le-Street
Doncaster
Yorkshire
DN6 7BD
United Kingdom

2. The Domain Names:

I have been asked to provide a Decision in respect of the following domain names:

co-partfinder.co.uk
copartauction.co.uk

(“the Domain Names”)

3. Procedural History:

- 3.1 The Complaint was received by Nominet on 19 August 2010, the Response was received on 14 September 2010, and the Reply on 23 September 2010. Mediation was attempted, but failed. The Complainant paid the necessary fee for a Full Expert Decision on 20 October 2010.
- 3.2 I was appointed as Expert on 1 November 2010. I have confirmed to Nominet that I am independent of each of the parties and that I am not aware of any facts or circumstances which might call my independence into question.
- 3.3 There are two matters that I wish to mention before proceeding to the substance of the case. First, the Domain Names are registered in the name of "DMS", with Nominet's records listing the "registrant type" as a "UK Individual". In my opinion, it is unsatisfactory that a person is permitted to register a domain name by reference to an identity that is plainly incorrect or incomplete. I appreciate that the process of registration of domain names is largely automated but, in the light of the potential abuse of the system, and the need to be able to identify and contact registrants, it would be helpful if the system could be adapted to prevent this.
- 3.4 The electronic file that I received from Nominet envisaged that the Respondent should be named as "Mr DMS Martin" in this Decision. From reading the case file, it is clear to me that the letters "DMS" are in fact an acronym for the trading name of a company that operates from the Registrant's address, Doncaster Motor Spares Limited, and are not the initials of any relevant individual. The Mr Martin concerned is a Mr Richard Martin, who has acted as Respondent in these proceedings, is a company director of Doncaster Motor Spares Limited, and also appears from material on its website to be its Managing Director. I have therefore retained the name of the Respondent as "DMS", but do so on the basis that the Domain Names were registered by Mr Richard Martin on behalf of Doncaster Motor Spares Limited. For the avoidance of any doubt, my decision would be the same whether the Registrant were Mr Martin in his personal capacity, Mr Martin acting for the company, or the company itself.
- 3.5 The second, related, matter is that the Complaint relates to a third domain name, copartdirect.co.uk, as well as the Domain Names. Copartdirect.co.uk is registered in the name of Doncaster Motor Spares Ltd, which is listed in Nominet's records as a "UK Limited Company, (Company no. 739986)" of the same address as the address of the Respondent. Upon enquiry with Nominet as to why I had not been asked to determine the Complaint in relation to the third domain name, I was informed that this had been assigned to a separate case file because paragraph 3d. of the DRS Procedure only permits a complaint to relate to more than one domain name where they are all registered in the name of the same respondent.
- 3.6 Paragraph 12c. provides that multiple domain name disputes may be consolidated by a decision of Nominet or the Expert pursuant to a request by one of the parties. In this case, I am informed that no such request has

been made, even though the possibility of consolidation would have been explained.

- 3.7 Given the obvious link between the cases, it seems to me that this is a case where an exception to the usual Experts' "cab rank rule" should have been made so that the two Complaints could have been determined by the same Expert, in order to avoid the risk of inconsistent decisions being issued based on essentially the same set of facts and in relation to very similar domain names. Unfortunately, I realised the situation too late to be able to try to arrange this. Accordingly, I proceed to decide the case in relation to the two Domain Names listed in section 2, but I comment again at the end of section 6 in relation to the connection between this case and the complaint against copartdirect.co.uk.

4. Factual Background

- 4.1 The following facts are derived from the Complaint, Response and Reply and their various Annexes and from my review of the websites to which the Domain Names point, as well as the Complainants' websites at www.copart.com, www.copart.co.uk, www.copartfinder.com, www.copartfinder.co.uk and the websites of Doncaster Motor Spares Limited at www.motorhog.co.uk and www.partfinders.co.uk.
- 4.2 The Complainants both operate in the motor salvage remarketing industry. The Second Complainant ("**Copart US**") is a NASDAQ listed public corporation registered in California, USA. The Lead Complainant ("**Copart UK**") is an English company in the group of companies ultimately owned by Copart US. Other companies in the same group include Copart Europe Limited and Copart Limited, both registered in England and Wales. The name "Copart" is used as a group trading name.
- 4.3 Copart Limited was incorporated under the name Steelbreaking Limited on 18 November 1919. After an interim change of name in 2002 to Universal Processing Limited, it adopted its current name on 7 August 2008. Copart Europe Limited was originally incorporated under the name Copart (UK) Limited on 3 April 2007, changing its name on 31 July 2009. Copart UK adopted its current corporate name on 31 July 2009, having operated under other names (not including "Copart") beforehand.
- 4.4 Both Complainants remarket motor salvage to their registered trade buyers exclusively via internet auctions. On-line business is conducted via the Complainants' websites listed in paragraph 4.1 above.
- 4.5 Between them, the Complainants have registered a variety of trade marks and domain names that comprise or contain the word COPART. These include the following:
- (a) UK trade mark no. 2466325 for a figurative mark comprising the word "Copart" with a logo containing the letters "C" and "i", filed on 10 September 2007 and registered in respect of: motor vehicles (class 12);

auctioneering of accident damaged and straight vehicles to trade buyers (class 35); and recovery, storage of accident damaged vehicles on behalf of the insurance industry, collection, storage and recovery of vehicles (class 39);

- (b) Community trade mark no. 5428041 for the word COPART, filed on 30 October 2006 and registered in respect of *inter alia*: on-line trading services relating to vehicles (class 35) and brokerage services relating to vehicles conducted on an electronic communication network (class 36);
 - (c) US trade mark no. 76491833 for a figurative mark containing the letters “Ci” and then the word “Copart”, filed on 21 February 2003, and no. 77667618 for the word COPART, filed on 10 February 2009, both in respect of *inter alia* vehicle auction services.
 - (d) the following domain names, in order of registration date: copart.com (29 January 1996), copartfinder.com (15 April 1999), co-part.com (24 May 1999), mycopart.com (19 May 2005), copart.co.uk (4 June 2006), copartdirect.com (9 December 2006), and mycopart.co.uk (10 July 2010).
- 4.6 Copart UK is also registrant of copartfinder.co.uk, originally registered on 5 January 2009 by Doncaster Motor Spares Limited (“**DMS Ltd**”) and transferred to Copart UK following a successful complaint to the Nominet DRS made on 10 August 2009, and decided on 7 December 2009: *Copart UK Limited v Doncaster Motor Spares Limited* (DRS 7491).
- 4.7 The Respondent is represented by the Managing Director of DMS Ltd, which is a vehicle dismantling specialist based in Adwick-le-Street near Doncaster in England. DMS Ltd is registrant of the domain names, doncastermotorspares.co.uk (14 January 1999) and motorhog.co.uk (8 December 2008), both of which point to DMS Ltd’s website at www.motorhog.co.uk.
- 4.8 DMS Ltd was registered with Copart US as its customer from June 1995 (before Copart UK’s launch in November 2007), having been a customer of Copart UK’s legacy business Universal Salvage. DMS Ltd bought its first vehicle from Copart UK on or around 15 November 2007 and registered as a specific type of a buyer, called a “default buyer” in April 2008. Between 5 November 2007 and the date of the Complaint, DMS Ltd purchased 5246 vehicles from Copart UK’s internet auctions.
- 4.9 DMS Ltd was previously the landlord of one of the Copart UK’s facilities. When Copart UK acquired the assets of A G Watson Auto Spares (Scotland) Limited on 29 February 2008, Copart UK inherited the lease of premises in Doncaster, South Yorkshire. Copart UK terminated that lease with effect from 30 November 2008. Soon after that, DMS Ltd raised a grievance with the Copart UK about the state of the premises at the termination of the lease and threatened legal action regarding the alleged dilapidations.

- 4.10 On 5 January 2009 DMS Ltd registered the domain names copartfinder.co.uk and co-partfinder.co.uk. As mentioned above, the first of these domain names was transferred to Copart UK following DRS decision 7491. The second is the subject of the Complaint that has been separated from this one.
- 4.11 Both of the Domain Names in issue were registered by the Respondent on 18 August 2009, shortly after DMS Ltd had been notified of Copart UK's DRS complaint in respect of copartfinder.co.uk.
- 4.12 The Domain Names point to webpages at www.co-partfinder.co.uk and www.copartauction.co.uk respectively, each of which states that the relevant domain is "parked". There has apparently been no trading through either of these websites to date.
- 4.13 On 24 August 2009 a company named Copartfinder Limited was incorporated at Companies House. Its only subscriber is Doncaster Motor Spares Holdings Limited, which is said by the Respondent to be owned by DMS Ltd.
- 4.14 DMS Ltd and the Respondent have registered a large number of domain names, including many which consist of the name of a car manufacturer followed by generic terms such as "parts", "spares" and "partfinder".

5. Parties' Contentions

Complaint

- 5.1 In support of the claim to have "Rights in respect of a name or mark which is identical or similar to the Domain Names" under paragraph 2a.i. of the DRS Policy, the Complainants rely on the various trade mark and domain name registrations, as well as their various trading activities that I have summarised in section 4 above.
- 5.2 The Complainants assert that, having registered the domain name copartfinder.com in April 1999, Copart US developed a website at www.copartfinder.com that is designed to locate spare parts for different vehicle specifications throughout the USA and that there is a link on the website www.copart.com which directs the buyer to www.copartfinder.com.
- 5.3 The Complainants assert that Copart US has an annual turnover of \$743 million and is a primary sponsor in both NASCAR and NHRA car racing. At the beginning of March 2010 it launched a TV show about selling vehicles through its online auction called "Sold in Seconds". Copart Inc. also sells vehicles through its online CopartDirect service. The Complainants exhibit an extract from Copart Inc.'s Annual Report 2009.
- 5.4 They claim that, since its formation in 2007, Copart UK has grown through the acquisition of several established British vehicle salvage businesses. The businesses incorporated into the Copart UK business are/were Universal Salvage PLC, Century Salvage Sales Limited, AG Watson Auto Salvage &

Motor Spares (Scotland) Limited, Simpson Bros. (York) Holdings Limited and D Hales Limited. Copart UK claims to be able to facilitate the demands of several major motor insurance companies and other clients to collect vehicles within strict service levels throughout the whole of the UK and dispose of them on their behalf. Copart UK also claims to be the biggest vehicle salvage remarketing company in Europe.

- 5.5 The Complainants say they have more than 50,000 vehicles available for online bidding every working day and that they operate more than 140 facilities throughout USA, Canada and the UK, out of which 15 facilities are based in the UK.
- 5.6 Turning to the issue of abusive registration, the Complainants rely on the facts and matters that I have summarised in paragraphs 4.8 to 4.10 above concerning the past history of trading between DMS Ltd and Copart UK and the property and domain name disputes described. They allege that DMS Ltd has been regularly purchasing vehicles through Copart UK's website and that, as a vehicle dismantler, it is also a partial competitor of Copart UK.
- 5.7 The Complainants assert that the Respondent knew and knows the Complainants and their brand names and say that the Domain Names both incorporate the Complainants' main trade mark COPART along with the generic words "auction" and "finder" respectively. The Complainants also point to the timing of the registration of the Domain names, being shortly after Copart UK filed the DRS complaint against DMS Ltd in respect of copartfinder.co.uk.
- 5.8 Based on the above facts and matters, the Complainants claim that the Respondent has registered the Domain Names as blocking registrations and/or that they were each registered for the purposes of unfairly disrupting the Complainants' business.
- 5.9 Given that the Respondent/DMS Ltd and Copart UK are direct competitors operating within the same motor salvage industry, the Complainants assert that it is unlikely that the domain names will or could ever be used in any other way than as blocking the Complainants' registration or to confuse site visitors as to whether the goods and/or services are provided by or associated with the Complainants.
- 5.10 The Complainants conclude by requesting the transfer of the Domain Names.

Response

- 5.11 The Respondent uses the term "we" throughout the Response, apparently referring to Mr Martin and his involvement in DMS Ltd interchangeably. He states that the business has been trading in the UK for over 60 years and was incorporated as a company in 1962. He claims that the company's business comprises the selling of car parts and vehicles and that it has run an online auction for cars and parts for over 10 years.

- 5.12 In relation to the Domain Name co-partfinder.co.uk, the Respondent claims to have owned the domain name partfinders.co.uk and operated the website at www.partfinders.co.uk for over seven years, as well as owning the company Copartfinder Limited (company no. 6998930). On this basis, he asserts that the Domain Name co-partfinder.co.uk is a legitimate registration.
- 5.13 The Respondent states that DMS Ltd runs an online auction for vehicles and parts via a website at www.motorhog.co.uk and has done for several years. He adds that it has the domain www.partauction.co.uk and also www.copartauction.co.uk (both in fact registered to “DMS” – a “UK Individual” on 18 August 2009) and is therefore entitled to register the domain name copartauction.co.uk.
- 5.14 More generally, the Respondent claims that DMS Ltd is developing several hundred websites and that it registers domain names if they are in the company’s line of business. These are then developed, using keywords to establish high rankings with Google and other search engines. He asserts that all domain names contain generic phrases connected with vehicles, parts, auctions etc. and he presents a long list of such domain names, which I have reproduced at the end of this decision. Some of these contain well known motor industry brand names combined with descriptive words, such as audicarspares.co.uk, while others are entirely descriptive, such as car-bumpers.co.uk.
- 5.15 For these reasons, the Respondent states his belief that he/DMS Ltd have the right to register and use the Domain Names.

Reply

- 5.16 In its Reply, the Complainants make the following points in particular:
- (a) The word COPART is an invented word and is well known as being associated with the Complainants throughout the vehicle salvage industry for online remarketing of vehicle salvage and, increasingly, of non-salvage vehicles. It is therefore neither generic, nor a term which can legitimately be claimed to fall within the Respondent’s line of business.
 - (b) Use of COPART with the generic term ‘finder’ can only legitimately refer to the search function provided by the Complainants; and use of COPART with the generic term ‘auction’ can only legitimately refer to an auction which is genuinely associated with the Complainants. Any use of the domains by the Respondent is likely to confuse people and/or businesses into believing that such domains are registered to, operated or authorised by, or otherwise connected with the Complainants.
 - (c) So far as the Respondent’s reliance on the partfinders.co.uk domain is concerned, the words “part finders” are generic and descriptive, in contrast with the Complainants’ name and trade mark COPART, which is not.

- (d) Turning to the Respondent's reliance on the company Copartfinder Limited, the Domain Name copartfinder.co.uk¹ was registered on 5 January 2009, shortly after the property dispute between the parties, whereas the company Copartfinder Limited was not incorporated until 24 August 2009, two weeks after Copart UK filed its previous DRS complaint (DRS 7491) in respect of copartfinder.co.uk.
- (e) Copartfinder Limited is non-trading and appears to have been incorporated by the Respondent in bad faith, after his business relationship with Copart UK broke down, in an attempt to construct his defence to the present Complaint ex post facto. Further, the fact that the company is non-trading shows the Respondent knows it cannot actively trade under that name within its usual industry sector, without infringing the Complainants' registered trade mark 'COPART' and/or passing off its business as being associated with that of the Complainants. As a non-trading company, the incorporation of Copartfinder Limited serves no purpose to the Respondent, except for attempting to cause damage to the Complainants.
- (f) The home page of the website www.partfinders.co.uk displays a list of links which are made up exclusively of the name of a motor vehicle manufacturer and the generic word 'parts', from which a site user can select particular makes of car parts. COPART does not appear in this list, because neither it, nor the prefix CO, constitutes the name of a motor vehicle manufacturer, in respect of which a site user would search for parts.
- (g) The Respondent's reliance on the domain names partauction.co.uk and co-partauction.co.uk does not help. These were both registered on 18 August 2009, the same day as the Domain Names and eight days after Copart UK filed its previous complaint in respect of copartfinder.co.uk. Both of the domain names are parked and the Respondent has not demonstrated that he has made any preparations to use the domains in connection with a genuine offering of goods or services.
- (h) Given that Copart UK trades as "Copart" and is the largest vehicle remarketer in the United Kingdom, any active use of the domain by the Respondent would confuse people – and particularly those with any knowledge of the UK's used car/vehicle salvage market - into believing that the domain is registered to, operated or authorised by, or otherwise connected to Copart UK.
- (i) The registration of domain names containing the trade marked names of motor vehicle manufacturers (see Annex hereto) will potentially result in further disputes based on the Respondent's pattern of registered trade mark infringement and/or represents further evidence

¹ The Reply actually refers to co-partfinder.co.uk at this point, but this is clearly a typographical error since that is one of the Domain Names in issue and was registered on 18 August 2009, whereas copartfinder.co.uk was registered on 5 January 2009.

of the Respondent's cybersquatting/domain name grabbing activities in relation to domain names closely linked with pre-existing rights holders and/or competitors.

- (j) The mere registration and any further use of either of the Domain Names would amount to infringement of the Complainants' registered trade marks and/or passing off.

6. Discussions and Findings

General

6.1 Paragraph 2a. of the Policy provides that, to be successful under the DRS, a 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 the Domain Name; and*
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).*

Complainants' Rights

6.2 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".

6.3 Based on the registered trade marks listed in paragraph 4.5 above, which are all owned by one or other Complainant, and supported by common law rights accrued through trading under the name "Copart", I have no hesitation in holding that the Complainants have established their ownership of Rights in the name and mark COPART.

6.4 Copartauction.co.uk comprises the name COPART together with the descriptive word "auction". This addition leaves the "copart" element easily visible and intelligible. Therefore, ignoring the ".co.uk" suffix, as I should, I conclude that COPART is similar to this Domain Name.

6.5 In the case of co-partfinder.co.uk, once again the ".co.uk" suffix can be ignored and the word "finder" is wholly descriptive, but in this case there is an added hyphen between the "co" and "part". The Respondent has not presented any arguments to distinguish between his uses of "copart" and "co-part". Indeed, he relies on the company registration of Copartfinder Limited (not Co-partfinder Limited) in support of the registration of co-partfinder.co.uk. I believe that the hyphen does make a noticeable difference, in that some people would perceive the name as splitting into the two elements "co-" and "partfinder", rather than as "co-part" and "finder". However, those who know the Complainants' COPART name and mark may well still perceive the latter split of the Domain Name. Overall, I

believe that the COPART is sufficiently close to the Domain Name to pass the test of similarity under paragraph 2a.i.

- 6.6 In addition, the Complainants have demonstrated to the requisite standard that Copart US has acquired rights in the name COPARTFINDER as a result of using the name “CoPartfinder.com” prominently on a website used for sourcing automobile parts, whose address is www.copartfinder.com, since 1999 (a date which I have verified on the web archive at www.archive.org). This results in an even closer similarity with the Domain Name copartfinder.co.uk.
- 6.7 Therefore, the Complainants have satisfied paragraph 2a.i. of the Policy in respect of both Domain Names.

Abusive Registrations

- 6.8 Paragraph 1 of the Policy defines an “**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. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights.”*

- 6.9 I must take into account all relevant facts and circumstances which point to or away from the Domain Names being Abusive Registrations, taking each one separately.

- 6.10 Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. Those that are relied on by the Complainants are as follows:

“3a.i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

A. ...;

B. as a blocking registration against a name or mark in which the Complainant has Rights; or

C. for the purpose of unfairly disrupting the business of the Complainant;

- ii. Circumstances indicating 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;...

6.11 On the other hand, the Respondent appears to be relying on one or more of the following factors which may demonstrate that a Domain Name is not abusive:

“4a.i. Before being aware of the Complainant’s cause for complaint (not necessarily the ‘complaint’ under the DRS) the Respondent has:

A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

B. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name; or

...

ii. The Domain Name is generic or descriptive and the Respondent is making fair use of it;...

6.12 There is no doubt that the Complainants operate a large and legitimate business in the motor salvage remarketing industry in at least the United States and United Kingdom, involving inter alia on-line vehicle auctions and an on-line search facility for car parts, all by reference to the COPART name, and also COPARTFINDER in the case of the latter service. It is also clear that there is some overlap between these activities and those of the Respondent, and it is apparent that the Respondent wishes to expand further into an on-line search service for car parts.

6.13 COPART is an invented name. Although the generic word “part” appears in the name, and thereby alludes to an aspect of the Complainants’ activities, the overall name remains distinctive and is neither wholly descriptive nor generic. Therefore, the Respondent is unable to benefit from paragraph 4a.ii. of the Policy.

6.14 The Respondent has not disputed the Complainants’ claims in respect of the trading history between DMS Ltd and Copart UK, nor has he disputed the suggestion that he was familiar with the Complainants’ trade marks, in particular the house mark and trading name COPART. Based on all the evidence, I infer that the Respondent was also aware of the Complainants’ use of the name COPARTFINDER on Copart US’s website at www.copartfinder.com.

6.15 The Respondent has also not challenged the Complainants’ evidence as to the property dispute in Doncaster or the fact that the domain name copartfinder.co.uk that was dealt with in DRS 7491 was registered shortly thereafter. Similarly, it is plain from the case file that the Domain Names were both registered just a week after the DRS 7491 complaint was notified to DMS Ltd, as were the domain names partauction.co.uk and also co-partauction.co.uk.

- 6.16 When these circumstances are all taken together, they strongly point towards a conclusion that the Domain Names were registered primarily as blocking registrations and/or to disrupt the Complainants' business, in particular that of Copart UK, pursuant to paragraphs 3a.i.B and C of the Policy.
- 6.17 Nothing that the Respondent has said persuades me that this would be the wrong conclusion. The registration of Copartfinder Limited does not give rise to any rights in the name in the absence of any trading. Further, Copartfinder Limited was registered well after the Complainants had already acquired rights in the names COPART and COPARTFINDER and after the complaint was filed in respect of the domain name copartfinder.co.uk. I am therefore unable to deduce that this was registered in preparation for some legitimate trading activity. I note that the DRS Expert in DRS 7491 reached the same conclusion, though this has not influenced my decision.
- 6.18 The long list of other domain names registered by the Respondent and DMS Ltd does not persuade me of the legitimacy of the registration of the Domain Names either. I suspect that many of the owners of the motor vehicle brands that are included in these domain names will object to them, but I do not give any indication here as to whether any such objections would be well-founded. However, even if those domain names involved the legitimate use of the brand names concerned in order to assist internet users to source vehicle spare parts, there is no similar argument that could apply to the Domain Names since "co" is not a vehicle brand. Further, the Respondent has made no attempt to explain what other meaning is intended by the inclusion of "co" before "-partfinder" or "partauction" in the Domain Names.
- 6.19 The Respondent's registration of the domain name partauction.co.uk does not assist, given that it is merely parked and in any event was registered on the same day as the Domain Names. The other domain name mentioned, co-partauction.co.uk, seems to me to fall into the same category as the Domain Names in this case, though I have not been asked to rule on it.
- 6.20 The fact that the Respondent/DMS Ltd may run a legitimate business in selling cars and car parts and in running on-line auctions does not give it any right to do so by reference to a competitor's name. Although the Domain Names have not yet been used in connection with an active website, it does seem to me likely that any such use by the Respondent or DMS Ltd would – in view of their field of trade – almost inevitably lead internet users to believe that there was a connection with the Complainants or one of them, even if only by way of initial interest confusion.
- 6.21 In summary, therefore, I conclude that the Complainants have demonstrated the presence of the factors listed in paragraphs 3a.i.B. and C. of the Policy and the risk of the type of confusion envisaged under paragraph 3a.ii., whereas the Respondent has not satisfied any of the factors under paragraph 4. I believe that the Domain Names were both registered in a manner which took unfair advantage of and/or was unfairly

detrimental to the Complainants' Rights in the names COPART and (in the case of co-partfinder.co.uk) COPARTFINDER.

- 6.22 Accordingly, the Complainants have established on the balance of probabilities that they have Rights in respect of the name and mark COPART, which is similar to both Domain Names, and to the name COPARTFINDER, which is similar to the Domain Name co-partfinder.co.uk, and that the Domain Names are both Abusive Registrations in the hands of the Respondent.

Multiple DRS Cases

- 6.23 Paragraph 3c. of the DRS Policy states the following:

“3c. There shall be a presumption of Abusive Registration if the Complainant proves that the Respondent has been found to have made an Abusive Registration in three (3) or more DRS cases in the two (2) years before the Complaint was filed. This presumption can be rebutted (see paragraphs 4(a)(iv) and 4 (c)).

- 6.24 As far as I am aware, this is the first case in which the Respondent as an individual has been found to have made an Abusive Registration, though it is possible that the decision in relation to copartdirect.co.uk may go along similar lines and may even have been issued but not yet published.

- 6.25 Therefore paragraph 3c. does not apply in this case. However, I refer to it in order to highlight the connection between the Respondent and DMS Ltd (full name Doncaster Motor Spares Limited), which has already been found to have made an Abusive Registration in DRS 7491. In my view, the connection between the two is very close. Indeed, in view of the fact that the Respondent was named as “DMS” in Nominet's records for the Domain Names, it may well be that he was just using this as shorthand for the company name and did not intend to be the registrant in his capacity as an individual at all.

- 6.26 I therefore believe that any cases decided against the Respondent and DMS Ltd should be added together for the purpose of considering paragraph 3c. and, if they are found to have Abusive Registrations in three or more cases, both parties should be added to Nominet's “3 Cases Respondent Table” which can be found on its website. It would of course be for the Expert in any subsequent case to decide whether a presumption of Abusive Registration arose under paragraph 3c. and, if so, whether it was rebutted.

7. Decision

- 7.1 I find that the Complainants have Rights in respect of names and marks which are similar to each of the Domain Names and that the Domain Names, in the hands of the Respondent, are both Abusive Registrations.

7.2 I therefore direct that the Domain Names should both be transferred to whichever of the Complainants elects to become the registrant.

Signed Anna Carboni

Dated 26 November 2010

ANNEX

Respondent's/DMS Ltd's domain names

4SALVAGE.CO.UK
4SALVAGE.COM
A2PARTS.CO.UK
A3PARTS.CO.UK
A4PARTS.CO.UK
A5PARTS.CO.UK
ACCIDENTDAMAGEDCAR.CO.UK
ALFABREAKERS.NET
ALFACARSPARES.CO.UK
ALFASPARES.NET
AUDIBREAKERS.COM
AUDICARSPARES.CO.UK
AUDIPARTDIRECT.CO.UK
AUDIPARTFINDER.CO.UK
AUDISALVAGE.CO.UK
AUDISPARES.NET
BERLINGOPARTS.CO.UK
BIRMINGHAMCARSPARES.CO.UK
BMW-BREAKERS.COM
BMWCARSPARES.CO.UK
BMWPARFINDER.CO.UK
BMWPARTDIRECT.CO.UK
BREAKERS-ONLINE.CO.UK
BUY-ANY-CAR.CO.UK
BUY-ANY-CAR.COM
BUY-SALVAGE.CO.UK
BVSF.NET
CAR-BREAKING.CO.UK
CAR-BUMPERS.CO.UK
CAR-DOOR.NET
CAR-DOORS.CO.UK
CAR-HEADLIGHT.CO.UK
CAR-HEADLIGHTS.COM
CAR-HIRE-DONCASTER.CO.UK
CAR-HIRE-HUDDERSFIELD.CO.UK
CARRENTALHUDDERSFIELD.COM
CARSPARESBRADFORD.CO.UK
CARSPARESDONCASTER.CO.UK
CARSPARESHUDDERSFIELD.CO.UK
CARSPARESHULL.CO.UK
CARSPARESLEEDS.CO.UK
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