

DISPUTE RESOLUTION SERVICE

D00012859

Decision of Independent Expert

Perthshire Caravans

and

Dicksons of Perth

1. The Parties:

Complainant: Perthshire Caravans
Dundee Road
Errol
Perth
Perthshire
PH2 7SR
United Kingdom

Respondent: Dicksons of Perth
170 Dunkeld Road
Perth
PH1 3AA
United Kingdom

2. The Domain Name:

perthcaravans.co.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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

23 May 2013 14:49 Dispute received
29 May 2013 10:04 Complaint validated
29 May 2013 10:12 Notification of complaint sent to parties
29 May 2013 11:32 Response received
29 May 2013 11:32 Notification of response sent to parties
29 May 2013 13:39 Reply received
06 June 2013 08:44 Notification of reply sent to parties
06 June 2013 08:52 Mediator appointed
11 June 2013 13:47 Mediation started
10 July 2013 11:04 Mediation failed
10 July 2013 11:17 Close of mediation documents sent
22 July 2013 02:30 Complainant full fee reminder sent
25 July 2013 11:53 Expert decision payment received

Upon receipt of the Complaint on May 23, 2013 Nominet sent an e mail dated May 24, 2013 to the Complainant inviting it to review its case as is usual where a Complaint is short and lacks supporting evidence. The Complainant does not appear to have responded with a fuller Complaint.

4. Factual Background

Unfortunately due to lack of evidence very few assertions made by the parties can be verified as facts. The Respondent registered the Domain Name prior to issue of the Complaint and has used it for a web site in support of a business selling used caravans and motorhomes.

5. Parties' Contentions

The Complainant's contentions in its Complaint can be summarised as follows:

The Complainant has traded as Perthshire Caravans since 1936 and has a number of domain names including perthshire-caravans.co.uk and perthshire-caravans.com. Its customers refer to it as Perth Caravans.

The Respondent started selling motorcaravans recently using the Domain Name. Its business has always been called Dicksons of Perth. They are situated about ten miles away from the Complainant.

The Respondent is trying to pass its business off as the Complainant's in order to gain business from web searches.

The Complainant has had a number of customers phoning it asking if it is part of Dicksons of Perth.

No evidence has been provided of any of the above.

The Respondent's contentions can be summarised as follows:

The Respondent started trading in caravans and motorhomes over a year ago. It bought the Domain Name and perthmotorhomes.co.uk to avoid confusion with its separate business in cars. These domain names seemed appropriate for selling caravans in Perth.

The trading name remains Dicksons of Perth. All business materials use this trading name and the trading name is used when the phone is answered. At no time does the Respondent purport to be anything other than Dicksons of Perth, but it does have two separate businesses a car business and a leisure vehicle business trading from the same address. At no time does the Respondent purport to be associated with the Complainant.

Any calls to the Complainant asking about the Respondent may be due to the Complainant and Respondent being in close proximity to each other.

No evidence other than an undated screen shot of the web site at the Domain Name was provided in relation to any of the above.

The Complainant's contentions in its Reply can be summarised as follows:

The Respondent was originally a car dealer and still sells cars but does not have the domain name perthcars.co.uk. Instead they are using the Domain Name which is very close to the Complainant's trading name.

Sheriff Peter Anderson deemed the brand name as worthless and this may be why they have resorted to using a name similar to the Complainant. An article in the Perthshire Advertiser evidencing the view of Sheriff Anderson in this regard was provided as a link. No other evidence was provided

6. Discussions and Findings

General

To succeed in this Complaint the Complainant has to prove to the Expert pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name and, secondly, that the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).

Complainant's Rights

The Complainant has not asserted that it is the owner of a registered trade mark identical or similar to the Domain Name.

The Complainant asserts that it has traded as Perthshire Caravans since 1936, but unfortunately no evidence is provided to support the existence of any common law rights in this name whether as to extent or manner of use of the alleged trading name. Only in very exceptional circumstances would it ever be appropriate for an Expert to conduct investigations to supplement evidence which could be open to allegations of bias.

As such the Expert is unable to proceed any further in determining whether or not the Complainant has Rights in respect of a name or mark, which is similar to the Domain Name and move on to the question as to whether or not the Domain Name is an Abusive Registration which cannot be considered in isolation in any event.

The Complainant was alerted by Nominet that its Complaint was unsupported by evidence, but it chose not to supplement its submissions. It would, therefore, not be appropriate to delay determination of this matter further when the opportunity to correct deficiencies in evidence has already been given.

Had the Complainant taken heed of Nominet's warning and viewed the guidance page to which it had been directed, it would have found the Experts' Overview, paragraph 2.2 of which features the following passage:

"If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial

matter such as press cuttings and search engine results).”

As indicated, no material of that kind was produced by the Complainant to establish the existence of an unregistered trade mark right.

The Respondent also provided a Response without evidence, but since the Complainant has not proven that it has relevant Rights as defined in Paragraph 1 of the Policy the Complaint can proceed no further in any event.

7. Decision

In light of the foregoing findings, namely that the Complainant has not evidenced that it has Rights in respect of a name which is similar to the Domain Name the Expert directs that the Domain Name remain with the Respondent. The Complaint is dismissed.

Signed: Dawn Osborne

Dated: 19 August 2013