

DISPUTE RESOLUTION SERVICE

D00015774

Decision of Independent Expert

Amazon Europe Holding Technologies SCS

and

Mark Gale

1. The Parties:

Complainant:

Amazon Europe Holding Technologies SCS
65, Boulevard Grand-Duchesse, Charlotte
Luxembourg
L-1331
Luxembourg

Respondent:

Mr Mark Gale
51 St Helier Avenue
Morden
Surrey
SM4 6HY
United Kingdom

2. The Domain Name:

<amazonlogistics.co.uk>

3. Procedural History:

I confirm that I, the undersigned Tony Willoughby, 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.

10 April 2015 15:10 Dispute received
13 April 2015 11:55 Complaint validated
13 April 2015 12:20 Notification of complaint sent to parties
01 May 2015 02:30 Response reminder sent
06 May 2015 08:41 Response received
06 May 2015 08:42 Notification of response sent to parties
11 May 2015 02:30 Reply reminder sent
13 May 2015 12:15 Reply received
13 May 2015 12:17 Notification of reply sent to parties
13 May 2015 12:17 Mediator appointed
18 May 2015 11:08 Mediation started
03 June 2015 10:02 Mediation failed
03 June 2015 10:03 Close of mediation documents sent
15 June 2015 02:30 Complainant full fee reminder sent
15 June 2015 11:35 Expert decision payment received

4. Factual Background

The Complainant is an affiliate of Amazon.com, Inc., which is well-known worldwide for its online retailing business. For present purposes the distinction between Amazon.com, Inc. and the Complainant is immaterial.

The Complainant is the registered proprietor of Community Trade Mark registration No. 000916072 filed on 6 August, 1998 (registered 15 May, 2002) AMAZON.CO.UK for a variety of goods and services in classes 9,16, 35, 39 and 42.

On 3 May, 2013 the Complainant launched its distribution and

delivery service under the name AMAZON LOGISTICS, the purpose being to offer high quality delivery performance in support of Amazon's online retail business.

On 8 May, 2013 the Respondent registered the Domain Name. It was linked to a website listing the contact details of other businesses offering services similar to and/or competing with those of the Complainant, but is now connected to a webpage of a web hosting company stating that the Respondent's registration of the website has now expired.

On 29 September, 2014 the Complainant's representatives wrote to the Respondent drawing the Respondent's attention to the Complainant's trade mark rights and the likelihood of confusion resulting from the Respondent's use of the Domain Name. The letter contained an offer to purchase the Domain Name and included instructions as to how this could be achieved *via* the Nominet website.

On 17 October, 2014 the Complainant's representatives wrote again to the Respondent recording the fact that there had been an intervening telephone conversation in which the Respondent had indicated that he did not believe that his registration and use of the Domain Name constituted trade mark infringement, passing off or an Abusive Registration under the Policy. The letter went on to demonstrate that the Complainant took a different view and reiterated the offer to purchase.

5. Parties' Contentions

The Complainant

The Complainant contends that the Domain Name is identical or similar to names in which it has rights, namely its AMAZON.CO.UK Community Trade Mark, details of which are set out in 4 above, and AMAZON LOGISTICS, the name under which it launched its distribution and delivery service five days prior to the Respondent's registration of the Domain Name.

The Complainant further contends that the Domain Name in the hands of the Respondent is an Abusive Registration as defined in paragraph 1 of the Policy. The primary basis for this contention is that the AMAZON brand was very well-known as at 8 May, 2013 and it is inconceivable that the Respondent registered the Domain Name, a name featuring the name AMAZON LOGISTICS, without being very well aware of the Complainant's AMAZON LOGISTICS service launched 5 days earlier. The likelihood of confusion would have been obvious to the Respondent at the time.

Moreover, the Domain Name was linked to a website listing the services of other businesses offering services similar to and/or competing with those of the Complainant.

The Complainant deployed further arguments in support of its contention that the Domain Name in the hands of the Respondent is an Abusive Registration, but the Expert finds it unnecessary to address them here.

The Respondent

The Respondent states that he registered the Domain Name *"to help other internet users know who to contact when they had a problem with a courier as Amazon frustratingly had no idea themselves."*

He asserts that the Complaint should fail because he thought that he had been in negotiation with Amazon for transfer of the Domain Name at an agreed price of up to £150 and that the ball was still in Amazon's court. It was a negotiation, which stemmed from a false accusation made by the Complainant to Nominet that he was making business use of the Domain Name and which resulted in his contact details being provided to the Complainant.

The Respondent states that the website has remained the same since day one. He states that he has no connection with any of *"the numerous companies listed."* He says that he has made no money from the site and has no intention of ever doing so. Nor has he chased Amazon for the money they offered to pay him.

In the Response the Respondent expresses his dissatisfaction with the Complainant's service and indicates that he has commenced a civil action against Amazon in the Northampton County Court over Amazon's refusal to supply a VAT invoice.

The Complainant (in Reply)

The Complainant clarifies the sequence of events in September/October 2014 when the parties were in correspondence as set out in 4 above. It also addresses the Respondent's assertion that his use of the Domain Name has been a not-for-profit use.

6. Discussions and Findings

General

This dispute falls to be decided by reference to the Version 3 of the Nominet DRS Policy, which came into force on 29 July, 2008 ("the Policy").

In order for the Complainant to succeed it must (pursuant to Paragraph 2 of the Policy) prove to the Expert, on the balance of probabilities, **both** that:

*It has Rights in respect of a name or mark which is identical or similar to the Domain Name; **and***

the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.

Accordingly, the Complainant is required to prove two matters: first, the existence of relevant rights and, secondly, that in the hands of the Respondent the Domain Name is an Abusive Registration.

Rights

The meaning of 'Rights' is clarified and defined in the Policy in the following terms:

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;

In this case the Complainant relies *inter alia* upon its AMAZON.CO.UK Community Trade Mark registration, details of which are set out in 4 above.

The Domain Name is identical to the Complainant's registered trade mark save for the insertion after "Amazon" of the word "logistics". In the Expert's view the word "logistics" does nothing to diminish the distinctiveness of the Complainant's trade mark in the Domain Name. Indeed, by adding the word "logistics" the Respondent has precisely replicated the name of the Complainant's Amazon Logistics service launched 5 days prior to the Respondent's registration of the Domain Name.

The Expert finds that the Complainant's AMAZON.CO.UK Community Trade Mark is similar to the Domain Name.

Thus the Complaint succeeds under the first element of the Policy and it now falls to the Expert to determine whether in the hands of the Respondent the Domain Name is an Abusive Registration.

Abusive Registration

An Abusive Registration is defined in the Policy as follows:

Abusive Registration means a Domain Name which either:

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

has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

Paragraph 3 of the Policy contains a non-exhaustive list of factors, which may be evidence that a domain name is an Abusive Registration and Paragraph 4 of the Policy sets out a non-exhaustive list of factors, which may be evidence that a domain name is not an Abusive Registration.

However, the key to what constitutes an Abusive Registration is to be found in the wording of the definition cited above and the Expert is able to come to a determination on this point without delving into Paragraphs 3 and 4 of the Policy. Essentially, was it fair for the Respondent to have selected the Domain Name or did he do it in order to cause unfair detriment to the Complainant?

The Respondent states that he registered the Domain Name to help Internet users find couriers where something had gone wrong with their shipments [*“to help internet users know who to contact when they had a problem with a courier”*]. The webpage to which the Domain Name was connected was consistent with that expressed aim in that it contained a long list of couriers and their contact details. What the Respondent does not explain is why he selected for the Domain Name the name of just one of those courier services, namely the Complainant’s Amazon Logistics service, which is one of the businesses featured in the list. Why would he want to attract to a domain name identifying a service of the Complainant Internet users trying to contact one of the other couriers listed on his website? It cannot have been to attract business to the Complainant, because he has a very low regard for the quality of the service provided by the Complainant?

That the Respondent is very dissatisfied with Amazon’s quality of service is clear from the Response. Indeed, the Respondent claims to have commenced civil proceedings against the Complainant in the Nottingham County Court over the alleged failure of the Complainant to supply the Respondent with a VAT invoice.

The Expert has been provided with no details of the litigation in question, but in assessing the motive of the Respondent in adopting the Domain Name (the name of just one of a list of dozens of couriers appearing on the website connected to the Domain Name) the Expert is left with the clear impression that the motive was hostile to the Complainant. The objective seems to have been to expose Internet users wishing to contact the Complainant to competitors of the Complainant.

A website created to assist Internet users who may be having trouble

with any one of dozens of couriers will be providing a far better service if the domain name selected is generic in nature. Visitors to the Respondent's website are only likely to be people wishing to contact the Complainant's Amazon Logistics service. In adopting the Domain Name the Respondent must have known that he would be unlikely to be assisting Internet users at large.

It is self evident and must have been obvious to the Respondent when he selected the Domain Name only five days after the launch of the Complainant's Amazon Logistics service that a high proportion of visitors to the website would be Internet users looking for the Complainant's official website. They would not have been expecting to see a page featuring in large part the Complainant's competitors.

The Expert finds on the balance of probabilities that the Respondent selected the Domain Name in order to target the Complainant. The name indicates the Complainant's delivery service and nothing else. It impersonates the Complainant and when visitors learn that they have been deceived they are exposed to a list of services competing with the Complainant.

In the view of the Expert this was not, as the Respondent would have it, a laudable attempt to provide not-for-profit assistance to Internet users at large, but a less than laudable attempt to damage the business of the Complainant.

However reasonable the Respondent's complaints may be about the service of the Complainant (as to which the Expert has no detailed information), this was not a fair use of the domain name system.

The Expert finds that the Respondent registered the Domain Name for the purpose for which he used it, namely to cause unfair detriment to the Complainant. The Expert finds that the Domain Name in the hands of the Respondent is an Abusive Registration.

7. Decision

The Expert directs that the Domain Name, <amazonlogistics.co.uk> be transferred to the Complainant.

Signed Tony Willoughby

Dated 10 July, 2015