

DISPUTE RESOLUTION SERVICE

D00015855

Decision of Independent Expert

Nexus Vehicle Management Limited

and

Rajesh Sharma t/a Merchant Consulting

1. The Parties:

Lead Complainant: Nexus Vehicle Management Limited
141 Richardshaw Lane
Pudsey
West Yorkshire
LS28 6AA
United Kingdom

Respondent: Rajesh Sharma t/a Merchant Consulting
SCO 73, Sector 40
Chandigarh
160009
India

2. The Domain Name(s):

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

24 April 2015 17:21 Dispute received
27 April 2015 13:27 Complaint validated
27 April 2015 13:41 Notification of complaint sent to parties
12 May 2015 09:59 Response received
12 May 2015 10:02 Notification of response sent to parties
15 May 2015 02:30 Reply reminder sent
20 May 2015 12:07 Reply received
20 May 2015 12:08 Notification of reply sent to parties
20 May 2015 12:09 Mediator appointed
26 May 2015 10:38 Mediation started
08 July 2015 16:23 Mediation failed
08 July 2015 16:23 Close of mediation documents sent
14 July 2015 09:10 Expert decision payment received

4. Factual Background

The Complainant

The Complainant was incorporated in 1999. It has traded under the NEXUS mark since at least 2002 and changed its name to Nexus Vehicle Management Limited on 2 January 2002. It is a major vehicle provider in the UK with a turnover of approximately £50 million. In addition to providing vehicles, it also offers rental software to third party vehicle rental companies. It spends approximately £250,000 a year on advertising.

The Complainant uses the trading names “Nexus Rental” and “Nexus Vehicle Rental”. It operates a website at www.nexusrental.co.uk. The Complainant has used the mark “Nexus Vehicle Rental” on its website since at least November 2008. The website describes the Complainant as “*the UK’s leading corporate vehicle rental provider. As experts in B2B vehicle rental, we understand the needs of businesses and have tailored our products and services to ensure that our customers receive a hassle-free rental experience.*”

The www.nexusrental.co.uk domain name was registered by the Complainant on 17 June 2002. The Complainant has operated a website at this address since at least May 2004. The Complainant’s employees also use email addresses in the form xxx@nexusrental.co.uk.

The Complainant owns UK trade mark registrations for the NEXUS mark as follows:

1. UK registration 00002214286 for the word NEXUS registered in class 39 against “Arrangement of vehicle rental; booking of vehicle rental; contract rental of vehicles; supply of corporate vehicle rental; rental of vehicle fleets”. The registration dates from 15 November 1999.
2. UK registration 00002545936 for the figurative mark “NEXUS new thinking” registered in class 39 against “provision of car rental and related services”. The registration dates from 26 April 2010.

The Respondent and the Domain Name

The Domain Name was registered by the Respondent on 15 July 2011. The Respondent registered the Domain Name on behalf of Nexus Car Hire Limited, a company incorporated in England and Wales on 30 June 2011. Although it is not articulated in such terms, the relationship between the Respondent and Nexus Car Hire Limited appears to be a quasi principal: agent relationship and in this decision the term “Respondent” will be used to refer to both the named Respondent and the company Nexus Car Hire Limited.

The Domain Name is being actively used in connection with a website at www.nexuscarhire.co.uk. In the strapline to its website the Respondent describes itself as an “accident management specialist”. The text of the website includes the following wording which is reproduced below in the same form as appears on the website:

“Welcome to the world of Nexus Car Hire we are accident management specialist. Our team of professionals specializes in claims compensation with speed & efficiency as we understand the importance of time. Our working concept is simple NO WIN NO FEE basis including claims for drivers, passengers, riders, cyclists and pedestrians. We aim to settle them swiftly and obtain maximum possible compensation for our clients. Our success rate has been 100 % and clients are happy to give us reference.”

The Respondent uses the email address Info@nexuscarhire.co.uk in connection with its business.

5. Parties’ Contentions

The Complaint

The Complainant asserts Rights in a name which is identical or similar to the Domain Name. It relies on the trade mark registrations set out above. It also asserts unregistered rights in the “Nexus Rental” and “Nexus Vehicle Rental” marks. It points to its use of these unregistered marks on its website, email address and in advertising, all of which have been in active use since at least 2004. In relation to similarity between the NEXUS mark and the Domain Name, the Complainant points out that the “Nexus” element of the Domain Name is the only distinctive part of it. The “carhire” suffix is merely descriptive of the services offered on the Respondent’s website and does not have the effect of distinguishing the Domain Name from the Complainant or the Complainant’s trade marks.

The Complainant contends that the Domain Name is an Abusive Registration on the following grounds:

1. It was registered primarily for the purpose of unfairly disrupting the business of the Complainant (paragraph 3(a)(i)(C) of the Dispute Resolution Policy (the Policy)). The Complainant has been leasing vehicles under the NEXUS mark since at least 2002 and has built a

reputation in the market of vehicle hire. The Domain Name was registered on 15 July 2011. The Respondent's primary intention behind its choice of domain name was to take advantage of the Complainant's established reputation and to draw web traffic and ultimately custom away from the Complainant. The value in the Domain Name arose solely from its association with the well-known name of the Complainant. The situation is analogous to the earlier decision under the DRS Policy of www.veluxblind.co.uk (DRS 06973) in which the Domain Name was held to be an Abusive Registration. The choice of Domain Name was found to have taken advantage of the well-known VELUX brand.

2. The Respondent's registration and use of the Domain Name has likely confused and is likely to confuse potential customers of the Complainant about the entity behind the Domain Name (paragraph 3(a) (ii) of the Policy).

An Internet user is likely to believe that the Domain Name is owned by and the site is connected to, is authorised by, operated by or in some other way connected to the Complainant. This initial confusion is due to the similarity of the Domain Name to the Complainant's marks.

The Respondent is offering identical services to the Complainant under the NEXUS mark. This is likely to lead to actual confusion. Existing customers or users looking specifically for the Complainant's website, may mistakenly believe that the Respondent's website reflects an updated or modified version of the Complainant's website. Because the Domain Name offers services which compete with the Complainant this is likely to cause confusion and may draw custom away from the Complainant.

Speculative customers are likely to use internet search engines to locate the Complainant's website. Due to the similarity between the Complainant's nexusrental.co.uk domain and the Domain Name, the Respondent's website features high on search results. Appendix J to the Complaint is a screenshot of search results for "Nexus Hire" showing the Respondent as the third result. A potential customer could mistakenly use the Domain Name believing it to be the Complainant's. Because of the nature of the services offered by the Respondent and the prominence of the NEXUS mark on the Respondent's website, there is likely to be actual confusion on the part of the user.

3. The Complainant has no control over the quality of the Respondent's services and this is likely to affect the Complainant's reputation. The confusion caused by infringement of the Complainant's Rights is leading to a reduction in the value of its trade marks.

The Response

The Respondent asserts that it is entitled to use the Domain Name because it is the same as its corporate name- Nexus Car Hire Limited. It is also the same as the Respondent's email address info@nexuscarhire.co.uk.

In addition, it contends that the Domain Name is not the same as the Complainant's trading name. Nexus Rental is not the same as Nexus Car Hire.

The Reply

In its Reply the Complainant submits that the registration of a company name at Companies House does not in itself confer rights in the use of the registered name.

The Complainant also points out that the Respondent has produced no evidence that it has goodwill in the Nexus Car Hire name. The incorporation of the Respondent company and the registration of the Domain Name occurred in 2011, considerably later than the Complainant began using the NEXUS mark.

6. Discussions and Findings

Under Paragraph 2 of the Nominet Dispute Resolution Service Policy (the Policy) In order for the Complainant to succeed it must establish 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

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

Rights

Rights are defined in Paragraph 1 of the Policy as follows;

"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."

The Complainant has established that it has Rights in the NEXUS mark by virtue of its registered trade mark registration 02214286 for the word NEXUS (and also arguably conferred by the figurative trade mark registration 02545936 in which

the word NEXUS features prominently- although it is not necessary for the Expert to determine this point).

It has also established that through duration of use, advertising and market presence it has unregistered Rights in the marks NEXUS, NEXUS RENTAL and NEXUS VEHICLE RENTAL.

Each of these marks is similar to the Domain Name. The Expert accepts the Complainant's submission that it is the "Nexus" element of the Domain Name which is distinctive. The addition of the generic suffix "carhire" does nothing to dilute the significance of the NEXUS component in the Domain Name nor does it change its overall impact and its perceived connection to the Complainant.

It follows that the Complainant has established on the balance of probabilities that it has Rights in respect of marks which are similar to the Domain Name.

Abusive Registration

An Abusive Registration is defined in Paragraph 1 of the Policy as follows:

"Abusive Registration means 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights".

In addition to the general definition of Abusive Registration above, the Complainant's submissions are primarily based on the following provisions:

Use

The Complainant relies on the following provision of the Paragraph 3a of the Policy:

- iii. 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;

Registration

3 a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

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

.....

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

Although not specifically raised by the Respondent, Paragraph 4 of the Policy sets out a non-exhaustive list of factors which may be evidence that a disputed domain name is not an Abusive Registration. These include at paragraph 4ai

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;
- C. Made legitimate non-commercial or fair use of the Domain Name.

There are three major issues requiring consideration in relation to the issue of Abusive Registration. These are:

Whether the Respondent is correct in submitting that its corporate name, Nexus Car Hire Limited, confers an entitlement to use the corresponding domain name.

The extent of the Respondent's knowledge of the Complainant and its business when it registered the Domain Name in July 2011.

Whether the Domain Name in the hands of the Respondent falls within the definition of Abusive Registration set out in Paragraph 1 of the Policy- either because the Domain Name was registered primarily to disrupt the Complainant's business or because it is likely to cause confusion with the Complainant or is otherwise taking unfair advantage of or causing unfair detriment to the Complainant's Rights.

Dealing with each of these in turn.

The Respondent's corporate name

The Respondent is not correct in its assumption that the incorporation of a company with the Name Nexus Car Hire Limited confers an entitlement to use the domain name www.nexuscarhire.co.uk.

Company names are (like domain names) available on a "first come, first served" basis and do not confer any assurance that the name can be safely used without infringing a third party's rights.

The Respondent's submission on this ground fails.

Respondent's knowledge of the Complainant in July 2011

This issue is concerned with whether the Respondent's registration and use of the Domain Name pre-dated its knowledge of the Complainant and its marks. This is relevant to paragraph 4 of the Policy which provides that where a Respondent has made use of a domain name before having knowledge of a Complainant's cause for complaint, it may give rise to a presumption against Abusive Registration.

The Complainant has established that it had a successful market presence in 2011 (when the Domain Name was registered). Its turnover for the financial year ended 30 September 2012 was £34,357,066. For the financial year ended 30 September 2013 the turnover was £39,431,355 (copies of the Accounts are exhibited at Annex A to the Complaint). These figures demonstrate that the Complainant had an established business and website and online presence in 2011. They raise a presumption that a party in the position of the Respondent would have been aware of the Complainant's presence in the vehicle hire market in 2011.

In its Response the Respondent has not suggested that it was unaware of the Complainant in 2011.

In the circumstances the Expert finds that the Complainant has established on the balance of probabilities that the Respondent would have known of the existence of the Complainant and its NEXUS and NEXUS RENTAL marks in 2011 when the Domain Name was registered. It follows that when the Respondent began to trade under the Domain Name it was on effective notice that a more established and larger business was also trading under the NEXUS mark. This means that it had knowledge that there was a cause for complaint at that time.

The consequence of this is that the factors cited above in paragraph 4 which would suggest that the Domain Name may not be abusive, do not apply to the Respondent. The Respondent had de facto notice that the Complainant was known by the NEXUS mark when it registered the Domain Name.

Confusion and Unfair Disruption

Turning to the Complainant's submission that the Domain Name was registered to unfairly disrupt its business and that it is being used in a way which takes unfair advantage of the Complainant's Rights or is causing unfair disruption to its business.

Is there a common or related business activity?

There is a preliminary issue here concerning whether the Parties are operating in the same sphere of business activity. This is important because it impacts on the question of whether the Respondent was motivated by a desire to disrupt the Complainant's business when it secured the Domain Name. It is also relevant to the likelihood of confusion.

The Complainant specialises in business to business car hire and fleet management services. The evidence gives no indication that it does business with private consumers.

The Respondent on the other hand seems, from the content of its website, to provide accident management services- which include but which are not limited to replacement vehicle hire in the event of an accident. For example in the “About Us” section of its website the Respondent describes itself as follows (the text is produced exactly):

“We are strong team of qualified professionals working in the injuries claim industry for past several years. Nexus car hire has been established to provide help and advice to people who may have suffered injures which occurred through non-fault of their own.

Most important thing in the whole process is your decision, with whom you would like to go with? If you decide to make a claim you only do it once, so choosing who to go with is really important. Our services offer you peace of mind & our confident, mature & qualified staffs & a panel of expert injuries lawyers who will be working on your behalf and will make you comfortable. We strive to provide our customers with a no hassle and friendly services even out of office hours. Our working concept is simple NO WIN NO FEE.”

There is no reference to vehicle hire in the above description. There is such a reference in the “Services” section of the Respondent’s website which provides (text reproduced exactly):

“In case of road traffic accident Nexus car hire provides our valuable customers a list of services. Our working concept is simple NO WIN NO FEE basis including claims for drivers, passengers, riders, cyclists and pedestrians. We ensure you receive 100% compensation awarded to you. We strongly advise you to call us before calling your insurance company. Irrespective whether you are on third party or comprehensive cover we can provide you the following services for free.

- *We would assist you in getting your medical examination.*
- *Free Physiotherapy*
- *Like for like replacement vehicle can be provided.*
- *Vehicle repairs (Freedom to choose your own local garage or one of ours insurance approved garage)*
- *Free Recovery*
- *Free Storage*
- *No policy excess to pay*
- *Protection of your no claim bonus*
- *Personal injury compensation (100 %) including rehabilitation*

Hire / PCO Vehicles

All our vehicles are licensed by the Public Carriage Office for London Private Hire. Self drive PCO cars are exclusively intended for use by professionally licensed PCO drivers. Our fleets of cars even includes 6 and 7 passenger options and are for hire to any individual or company. They are available in both long and extra long versions .Again, all are PCO licensed.”

On the basis of the information before her, the Expert finds that the parties do not operate in an identical sphere of business and that they are not direct competitors. Although the Respondent's operation includes provision of replacement vehicles in the event of an accident, it is not primarily a car hire business and the services that the Respondent does provide are within a specific context of accident management. There is a degree of similarity between the businesses of the Parties in the sense that the Respondent's activities include vehicle hire amongst other accident management services- but they are not interchangeable businesses.

It would therefore not automatically follow that the Complainant's business would be disrupted by the registration and use of the Domain Name in connection with the Respondent's business. This situation can be distinguished from the Velux decision to which the Complainant refers in its submissions. In that matter the Respondent had used the well-known VELUX mark in connection with an offering of directly competing products. In this matter the situation is not so clear cut. Because of the different spheres of activities the Expert finds that the Complainant's submission that the Domain Name was registered primarily to disrupt the Complainant's business fails.

Turning next to the broader submission that the Domain Name was registered or has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Complainant contends that the Respondent's use of the Domain Name 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.

The Expert agrees with the Complainant that the Domain Name is likely to generate initial interest confusion. The NEXUS mark is well known and it is associated with the Complainant by virtue of the goodwill built up over a long period of trading and marketing by the Complainant. Customers or potential customers who are exposed to the Domain Name are likely to be under the mistaken impression that it is connected to the Complainant. This is the case especially because the suffix "carhire" is interchangeable in concept to "vehicle rental" or "rental" both of which have been used by the Complainant in conjunction with its NEXUS mark.

The Expert has noted above that the content of the Respondent's website and the services it provides have a different emphasis to those provided by the Complainant. At one level it is difficult to see how the initial interest confusion caused by the similarity in Domain Name will damage the Complainant. The Respondent is not offering directly competing services in the main. A customer looking for corporate vehicle hire is therefore unlikely to attempt to do business with the Respondent.

But at another level there is a more insidious form of confusion and harm flowing from the use of the Domain Name in connection with the Respondent's website. The harm flows from the strength of the Complainant's NEXUS mark. Because it is so strongly associated with the Complainant a visitor to the website might believe

that the Complainant has expanded its range of services into accident management services and therefore have a mistaken belief that the Respondent is connected to the Complainant. This perceived connection damages the Complainant because it means that it loses control over the reputation and exclusivity of its NEXUS brand. The Complainant may also lose the opportunity to expand its use of its trade marks into private vehicle hire or accident management in the future should it choose to do so.

Allied to this is the use of the Domain Name as part of the Respondent's email address "@nexuscarhire". If emails that are sent from this address are in public circulation they may be mistakenly associated with the Complainant. The potential for confusion is aggravated by the similarity with the Complainant's own email address- "@nexusrental". The potential for confusion generated by the Respondent's email address makes it even more difficult for the Complainant to control the reputation of its NEXUS mark and its exclusive association with the Complainant.

All of the above factors establish that the use of the Domain Name by the Respondent will on the balance of probabilities cause unfair detriment to the Complainant's Rights as provided for in the definition of Abusive Registration in the Policy.

It should also be noted that the Respondent has selected a Domain Name whose value and attraction lies in its association with the Complainant. Whilst the Expert has found that the Respondent's dominant motivation in registering the Domain name was not to cause disruption to the Complainant's business, it has nevertheless capitalised on a valuable asset belonging to the Complainant. The registration takes unfair advantage of the Complainant's goodwill in the NEXUS mark and is another reason why the Domain Name is in the hands of the Respondent an Abusive Registration under the Policy.

7. Decision

The Expert finds that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Expert orders that the Domain Name to be transferred to the Complainant.

Signed Sallie Spilsbury

Dated 4 August 2015