

DISPUTE RESOLUTION SERVICE

D00017086

Decision of Independent Expert

Kentec Generators Ltd & Ors

and

Mr Peter Whitfield

1. The Parties:

Lead Complainant: Kentec Generators Ltd
Kentec Generators Ltd
34 Hydes Road.
Wednesbury
West Midlands
WS10 3SY
United Kingdom

Respondent: Mr Peter Whitfield
YorPower Ltd
Hurricane Close
Sherburn Industrial Estate
Sherburn in Elmet
Leeds
Yorkshire
LS25 6PB
United Kingdom

2. The Domain Name:

kentecgenerators.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.

17 February 2016 08:59 Dispute received
17 February 2016 09:16 Complaint validated
17 February 2016 09:25 Notification of complaint sent to parties
03 March 2016 11:18 Response received
03 March 2016 11:19 Notification of response sent to parties
04 March 2016 11:27 Reply received
04 March 2016 11:28 Notification of reply sent to parties
04 March 2016 11:28 Mediator appointed
09 March 2016 13:12 Mediation started
21 March 2016 16:54 Mediation failed
21 March 2016 16:56 Close of mediation documents sent
23 March 2016 12:57 Expert decision payment received

On 19 April 2016, in order to clarify the submissions in the Complaint and the Reply, the Expert requested further information pursuant to Paragraph 13a of the DRS Procedure. The text of the Expert's Request is set out in a schedule to this Decision. The Complainants responded to the 13a Request on 20 April 2016.

The Respondent was given the opportunity to respond and did so on 25 April. For technical reasons this submission did not come to the attention of the Expert until 10 May.

On 11 May the Complainants requested permission to make a second 13a submission. Having reviewed their explanatory paragraph under 13b of the Procedure, the Expert admitted the full submission on 12 May. The Respondent was given the opportunity to respond but has not done so.

There is a point of procedural and substantive importance arising from the Complainants' first 13a submission of 20 April. In the Complaint and Reply there was a sole Complainant - Kentec Generators Limited. In the 13a submission it was clarified that there are in fact three separate Complainants; Kentec Generators Limited (the original and Lead Complainant), Tim Kendall (the Second Complainant) and Electrogene Limited (the Third Complainant). The relationship between the three Complainants is explained in paragraph 4 of this Decision.

4. Factual Background

This Decision concerns the trading names KENTEC and KENTEC GENERATORS. The factual background is set out below. A timeline can be found at the end of this section of the Decision for ease of reference.

The Expert has carried out searches of Companies House records and a domain name WHOIS search when considering this Decision. These are noted at the relevant parts of this Decision. All documents consulted are matters of public record. The searches were carried out in order to understand fully parts of the Parties' submissions so that proper consideration could be given to them. Neither Party in this matter is legally represented and the facts and issues have been complex. It is by no means implied that Experts should carry out independent searches in every case under the Policy. This case has been unusual.

The Complainants

The Lead Complainant (Kentec Generators Limited) provides generator sales and generator servicing and repair services. A Companies House search by the Expert on 12 April 2016 shows that the Complainant was incorporated on 2 April 2015 with company number 0954980.

The Second Complainant (Tim Kendall) is managing Director of the Lead Complainant. Mr Kendall began trading as a sole trader using the KENTEC and/or KENTEC GENERATORS mark in 1992. The history of the use of the KENTEC mark is set out further below. Mr Kendall registered the domain name kentecgenerators.com on 1 April 2015 (this information is from a search carried out by the Expert on 11 May 2016).

The Third Complainant (Electrogene Limited) was incorporated 19 March 2013. It has a website at www.kentechgenerators.com. The Complainant's 13a submission states that the company "trades as" Kentec Generators. It is operated by the Second Complainant and his partner.

Historically, a company called Kentec UK Limited owned the Domain Name until July 2013. This company traded as Kentec Generators and was connected to the Second Complainant (he was a shareholder and director). A Companies House search by the Expert on 11 May 2016 established that this company was incorporated on 28 September 1999 (company number 03849670). Kentec UK Limited was dissolved on 27 May 2014.

The Complainants provide a letter dated 16 February 2016 from a design company confirming that a branding scheme for "Kentec" was created in August 2005 for letterhead, business cards and digital letterheads (i.e. while Kentec UK Limited was trading). In their 13a submission of 20 April the Complainants state that the brand design is still being used. The design company also created a website in 2009 at www.kentecgenerators.co.uk (again, while Kentec UK Limited was trading).

The Respondent

Kentec UK Limited's registration of the Domain Name lapsed in July 2013.

The Domain Name was registered by Mr Whitfield of the Respondent on 22 July 2013. Mr Whitfield is an employee of YorPower Limited which is a company that operates nationally on service and repairs and globally on generator sales. The

Respondent is now using the Domain Name to direct traffic to a website at www.generatorwarehouse.co.uk. The website offers generators for sale. The Respondent offers no evidence of a trading style deploying KENTEC beyond the registration and use of the Domain Name to direct traffic to its own website.

Previous relationship

There is a previous relationship between those connected with this matter. On 24 July 2012 Yorpower Limited and Kentec UK Limited and its two shareholders (one of whom was the Second Complainant) entered into a share sale agreement for the sale of Kentec UK Limited's shares to Yorpower Limited. The consideration for the sale was £30,000 in staged payments as follows:

£20,000 on completion
£5,000 in September 2012
£5,000 in December 2012.

The Respondent paid £20,000.

On 1 October 2012 the Respondent wrote to Kentec UK Limited's accountants indicating that completion had not taken place citing various steps that were outstanding under the agreement and discrepancies revealed under the due diligence process. The Respondent requested a refund of the £20,000 paid and stated that it no longer wished to proceed to completion.

On 3 October 2012, the accountants for Kentec UK Limited responded. In summary, the majority of the Respondent's assertions were disputed. There is no evidence that any further action in relation to the share sale agreement was taken by either party.

TIMELINE

1992- Second Complainant begins trading using KENTEC

1999- Kentec UK Limited is formed and trades as Kentec Generators

2005- Branding scheme created for use of KENTEC

2009- website created for KENTEC

July 2012- share sale agreement entered into for sale of Kentec UK Limited to the Respondent

September 2012- Issues arose under share sale agreement and in October 2012 Respondent indicates that it does not wish to complete the sale.

March 2013- Electrogene Limited is incorporated

July 2013- Kentec UK Limited's Domain Name registration lapses and is registered by the Respondent.

May 2014- Kentec UK Limited is dissolved

April 2015- Kentec generators.com is registered by Second Complainant. At some point from this date Electrogene Limited operates a website at kentecgenerators.com.

April 2015- Kentec Generators Limited is incorporated

5. Parties' Contentions

The Complaint and 13a Submission

None of the Parties to this dispute are lawyers. The Complainants' submissions elide the various Complainants. In this section of the Decision the Expert has sought to differentiate between the three Complainants when it seems clear that a specific Complainant is being referred to.

Rights are asserted in the KENTEC mark. The Second Complainant relies on the length of time that he has traded under the mark "in various guises".

In the 20 April 13a submission the Second Complainant states:

"I have effectively been "Kentec" with regard to generators since 1992.... The name and design has evolved over the years and in 2005 [Design company] professionally designed the logo and names etc, this we are still using to this date."

and

"I believe that I own the intellectual property rights to "Kentec Generators" due to the extensive time period in use, and the professional design creation. The name, the reputation that I created, website, emails and design have never been purchased by Yorpower Limited."

The Complaint also relies on the fact that the First Complainant's corporate name features the KENTEC mark. It also points out that the Third Complainant trades as Kentec Generators and operates the domain name and website "www.kentecgenerators.com".

The Complaint states that the Domain Name is an Abusive Registration in the hands of the Respondent because it was registered and is being used to gain business advantage and sales from the Complainants. The Respondent does not use the brand KENTEC in relation to any other part of its business other than in connection with its website. Customers could easily make a mistaken connection between the Complainant and Respondent.

The Response and Respondent's 13a submission

The Respondent refers to the share sale agreement of July 2012 and a preceding Heads of Terms dated 7 June 2012. The Heads of Terms document states that the sale was to include "Company vehicle, fork lift, stock, tools and web site". The Respondent submits that it paid £20,000 to acquire those assets. In its 13a submission the Respondent reiterates that it paid £20,000 under the terms of the share purchase agreement and received no tangible assets. The funds paid must- it submits- therefore cover intangible assets, including goodwill in the KENTEC mark.

Irrespective of the above acquisition of the assets, the Respondent asserts that it had every right to acquire the Domain Name when it became available in July 2013 and it did so on the open market. The redirection of the Domain Name to the website at generatorwarehouse.co.uk is also within its rights.

In the 13a submission the Respondent points out that the Third Complainant (Electrogene Limited) has been trading since March 2013 and that this confirms that the business does not require the KENTEC brand. It also disputes the submission that the Lead Complainant is actively trading. It submits that because it is operating from a home address there are no facilities for it to be carrying out generator sales, service and repair.

Further submissions around the share sale agreement

The Complainants submit that the share sale agreement never completed. As such, the Respondent has no right to anything belonging to Kentec UK Limited and that the Second Complainant (and his co-director and shareholder in Kentec UK Limited) should be the recipients to any goodwill relating to Kentec UK Limited.

The Complainant asserts:

- The Respondent did not pay the full consideration for the sale of Kentec UK Limited
- The sale agreement makes no specific mention of the website or Domain Name
- No specific value was placed on the website or Domain Name
- The Domain Name was not purchased when it was owned by Kentec UK Limited but nine months after the Respondent walked away from the purchase of Kentec UK Limited.

In response to the Expert's request, the Complainants confirmed in their 20 April 13a submission that they received no goodwill from Kentec UK Limited after the share sale agreement in July 2012. The Second Complainant and his partner had no option to re-take control of Kentec UK Limited due to liabilities and debtors that had not been dealt with from 24 July 2012 to 1 October 2012. The Third Complainant- Electrogene Limited was therefore formed "out of necessity". (The Respondent states in its 13 a submission that it was refused access to Kentec UK

Limited's bank account and the Respondent was therefore not in a position to chase debtors or pay liabilities during this period.)

In its the 20 April 13a submission the Complainants also state that no activity relevant to the goodwill in the term "Kentec" occurred between the dissolution of Kentec UK Limited (May 2014) and the formation of the Complainant. (This must mean the Lead Complainant which was incorporated in April 2015. The Third Complainant was incorporated before Kentec UK Limited was dissolved.)

Additional issue

There is a further submission by the Complainants about Kentec UK Limited's failure to renew the Domain Name in July 2013. They state that Kentec UK Limited did not have access (sic) because the Respondent had control of the @kentecgenerators.co.uk email at the time that the Domain Name registration lapsed. The Expert understands this submission as being that no renewal notices came to the attention of anyone connected to the Complainants. The Respondent indicates that it does not understand the submission. It says it had no control of an email address connected to the Domain Name before it registered the Domain Name.

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

The dispute concerns the marks KENTEC and KENTEC GENERATORS. The KENTEC GENERATORS mark is identical to the Domain Name (it being customary to discount the .co.uk suffix). The KENTEC mark is clearly similar to the Domain Name. The impact of the Domain Name derives from the distinctive word "KENTEC." The descriptive word "generators" adds nothing to the overall impact of the Domain Name. If the Complainants, or any of them, can establish Rights in the KENTEC GENERATORS and/or KENTEC marks the first criterion under the policy will have been met.

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 Complainants do not rely on any trademark registrations.

The Complaint erroneously refers to its company name of the Lead Complainant (Kentec Generators Limited) as conferring Rights. Mere registration of a company name at the Companies Registry without evidence of trading reputation does not of itself give rise to any Rights. The Complaint also refers to registration of the kentecgenerators.com domain name. As with the company name, registration of a domain name does not in itself confer Rights without evidence of a corresponding trading reputation.

The substance of the Complainants' case on Rights is therefore based predominantly on goodwill in the KENTEC and KENTEC GENERATORS marks. Does goodwill exist and, if so, when did it accrue and to whom does it belong? These are questions of some complexity. The Expert requested further information under Paragraph 13a of the Procedure because there were significant gaps in the original evidence to establish who has used the KENTEC mark and when. One key clarification obtained is that the Complainant is in fact three separate entities.

The Second Complainant relies on the length and extent of use of the KENTEC mark in the course of trade by him or by businesses connected with him.

Business has been conducted under the KENTEC mark for a significant amount of time- since the early 1990's. From around 1999 trade was carried out as a limited company, Kentec UK Limited, and under the current stylised form from 2005. Kentec UK Limited was dissolved in May 2014. It is accepted by all parties that this company effectively ceased trading by October 2012 when the Respondent indicated that it did not wish to complete the share sale. On the Complainants' evidence no use was made of the KENTEC mark by the Complainants between the dissolution in May 2014 and the formation of the Lead Complainant in April 2015 and the Complainants received no goodwill from Kentec UK Limited after July 2012 when the share sale agreement was signed.

The Respondent registered the Domain Name in July 2013. It claims that it purchased the Domain Name on the open market and that it was entitled to do so, and to exploit the Rights in the KENTEC mark, under the terms of the share sale agreement and because it had paid consideration of £20,000 to acquire the shares of Kentec UK Limited. The Complainant asserts that the agreement was never completed and no assets were transferred.

Even if the Respondent had no contractual right to the Domain Name it asserts that it was entitled to the Domain Name when the existing registration lapsed.

Findings about the share sale agreement

In the view of the Expert, despite the numerous submissions surrounding the share sale agreement, it is something of a red herring in this matter. It was either concluded or it was not concluded. The Expert is in no position to make a finding on this point on the evidence before her and it is unnecessary to do so.

It is not for the expert to undertake an overly technical analysis of the evidence produced to her but equally she must of course read and consider the meaning of documents provided by the parties as evidence. Two of the documents produced warrant comment: (i) the “Agreement” dated 24 July 2012 and (ii) the earlier Heads of Terms dated 7 July 2012.

On its face the Agreement is for the sale of Kentec UK Limited t/a Kentec Generators to the Respondent. This was to be achieved by the transfer, for consideration, of the entire share capital of that company from the Second Complainant and his partner to the Respondent. The document contains a whole of agreement clause at 12.1.

The Heads of Terms, for what they are worth, clarify as common ground at that stage that Kentec UK Limited owned the “web site” and that it was intended to be included with the rest of the company in the sale.

Neither document suggests any separation of the mark, goodwill, website or domain name from Kentec UK Limited and control and ownership of that company was plainly to be transferred to the Respondent with its assets intact.

The Expert finds then on the evidence (specifically without determining whether the Agreement was effective or not) that that the relevant Kentec UK Limited assets did not leave Kentec UK Limited by reason of the Agreement.

There is no evidence from either party (nor even a claim to the effect) that there was a separate agreement between Kentec UK Limited and either the Complainants or the Respondent which was sufficient or even intended to move assets out of Kentec UK Limited. The fact that the Respondent submits in its Response that it purchased the Domain Name “on the open market” after ownership had lapsed from Kentec UK Limited supports this view; as if it had already acquired ownership from Kentec UK Limited under the Agreement it would not have needed to do so.

Any assets belonging to Kentec UK Limited would have devolved to the Crown on dissolution of the company in May 2014.

It follows from the above that the Respondent’s assertion that the £20,000 it paid under the Agreement entitled it to the KENTEC mark is not for the purposes of this Decision sustainable on the evidence and the Expert rejects it. If the Respondent wishes to seek redress for the consideration it has paid to-date, there are other avenues available to it outside of the DRS Policy.

Goodwill and the Lead Complainant

The Expert accepts that the Lead Complainant is trading. The Respondent’s submission that it is operating from a residential address and therefore cannot be actively trading is rejected for lack of evidence.

What is lacking from the Lead Complainant’s case is detailed evidence about how the KENTEC mark is being promoted and used by the *Lead Complainant- Kentec*

Generators Limited. As the Expert's overview makes clear, complainants are expected to produce evidence to show that the name has been used (e.g. by way of sales figures, company accounts etc.) and that the name or mark is recognised by the purchasing trade/public as indicating goods and services of the Complainant (e.g. by way of advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter) (paragraph 2.2 of the Experts' Overview which is available on the Nominet website).

There is no evidence at all to show how the Lead Complainant is trading or to suggest that it has acquired a trading reputation. The Expert therefore finds that the Lead Complainant has not established Rights in the KENTEC mark.

Goodwill and the Second Complainant

The Second Complainant's case on ownership of Rights through length of use in the KENTEC mark in his hands fails for two reasons:

- (a) there is no evidence to show that the Second Complainant retained personal ownership of the goodwill following incorporation of Kentec UK Limited (trading as Kentec Generators) in 1999. On the contrary the evidence is that the brand evolved in the hands of Kentec UK Limited and the limited company traded the brand thereby acquiring the goodwill in the mark.
- (b) even if this is not the case, the hiatus in use of the KENTEC mark in the hands of the Complainants following the disputed share sale in 2012 and dissolution of Kentec UK Limited in 2014, makes it probable that goodwill in the KENTEC mark had ceased to exist by April 2015.

Discussion

The Expert accepts that the Second Complainant initiated the Kentec Generators business in 1992.

The incorporation of Kentec UK Limited in 1999 impacted on ownership of the goodwill. The goodwill generated through use of the name by the company is an asset of the company, not the directors in their personal capacities. As the company traded, so its corporate goodwill built up. During the company's trading period (around 1999-2012) the brand scheme around KENTEC was developed and rolled out. Goodwill attaching to this new identity belonged to the trading vehicle which made use of and benefitted from the branded identity- i.e. Kentec UK Limited.

Further, the Second Complainant was a director of the company. As such he had a fiduciary duty to act in the best interests of the company and to not make an undisclosed personal profit from his position. Personal exploitation of or benefit from the goodwill would be a breach of those fiduciary duties in the absence of evidence of a specific agreement to the contrary. There is no such evidence. It is not therefore correct to suggest that the Second Complainant accrued, or could

accrue, a personal interest in the goodwill generated by Kentec UK Limited's use of the KENTEC mark.

As stated above, because it was an asset of the company, any goodwill that existed would have devolved to the Crown in 2014. It no more belonged to the Second Complainant than it did to the Respondent.

Even if this finding is wrong, there is uncertainty about the extent to which goodwill continued to exist in the hands of anyone after October 2012 when it is accepted on all sides that Kentec UK Limited ceased trading, and whether it continued to exist at all after the dissolution of that company.

On the Complainants' evidence they made no use of the Kentec name until April 2015 (around two and a half years after Kentec UK Limited ceased trading). Although it is possible that there was residual goodwill at the point that Kentec UK Limited stopped trading, there is no evidence to suggest that this goodwill continued to exist at any of the milestone dates in this matter (July 2013 when the Domain Name was registered, May 2014 when Kentec UK Limited was dissolved or April 2015 when the KENTEC mark began to be used again).

The Complainants have therefore failed to establish on the balance of probabilities that goodwill continued to exist for their benefit during the period when they were not making use of the KENTEC mark.

Goodwill and the Third Complainant

The Expert accepts that the Third Complainant is using the KENTEC mark. The domain name kentecgenerators.com was registered by the Second Complainant in April 2015 and is used in connection with the Third Complainant's website on which the KENTEC mark appears. The Third Complainant also trades as Kentec Generators (the date on which it began to do so is not clear).

The Expert finds that at the date of this Complaint, the use of the KENTEC GENERATORS and KENTEC marks by the Third Complainant has generated goodwill for the Third Complainant. Its website is up and running and trade is being carried out under the kentecgenerators.com domain name. The website features the stylised KENTEC brand. These features have on the balance of probabilities generated a trading reputation and a degree of brand recognition associated with the Third Complainant. This is a new goodwill rather than a continuity of the historic goodwill associated with Kentec UK Limited.

The Expert therefore finds that the Third Complainant has established on the balance of probabilities that it owns Rights in a name or mark which is similar to the Domain Name. The first criterion of the policy is established and provides a threshold for consideration of Abusive Registration.

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".

The Expert finds that the Respondent's registration of the Domain Name in July 2013 was not an abusive registration. The Complainants have not established that Rights existed in the hands of the Third Complainant at the date of registration of the Domain Name. The Third Complainant was incorporated shortly before registration (in March 2013) but it is not clear that it was trading under the KENTEC mark at that time. Certainly the kentecgenerators.com domain name was not in use (the Second Complainant registered it in April 2015).

The Domain Name is now being used by the Respondent in connection with a website which on the evidence before the Expert is in direct competition with the Third Complainant. The Third Complainant's website and the Respondent's website both offer generators and associated services. There is a probability that consumers searching for KENTEC would be searching for the Third Complainant or its products or services. Consumers who are directed to the Respondent's website would be confused into thinking that the Respondent has a trading connection to the Complainant or the KENTEC services and products- for example that it is licensed to use the KENTEC mark. This takes advantage of the Third Complainant and its Rights in the KENTEC mark. The advantage is unfair because it is parasitical. Any resulting loss of sales or custom will be detrimental to the Third Complainant. The detriment is unfair because it arises from the exploitation of brand rights belonging to the Third Complainant.

Even if the customer does not make the assumption that the Respondent's website is associated with the Third Complainant, the fact remains that, as a result of the Domain Name, customers are exposed to the Respondent's website and to services offered in competition with the Third Complainant. Having attracted custom to the website the Respondent is effectively creating the risk that custom maybe diverted or switched to it. This is also unfairly detrimental to the Third Complainant's Rights because it will lead to lost revenue.

On the evidence, there is nothing to suggest that the Respondent is making any other use of the KENTEC mark save to direct traffic to its website. There is no evidence that it has incorporated the KENTEC mark into its branding or get up. Although the Respondent has been using the Domain Name to redirect traffic, it is unlikely that it will have acquired independent goodwill in the KENTEC mark in competition with the Third Complainant. This only adds to the probability that consumers will be confused into associating the Respondent with the Third Complainant. It is the Third Complainant which enjoys the association with the KENTEC mark in the mind of the public.

For these reasons the Expert finds that the Third Complainant has established on the balance of probabilities that the Respondent's use of the Domain Name is an Abusive Registration.

For completeness the Complainant's submission that it did not receive notification that the Domain Name was due for renewal in 2013 because of the Respondent has not been established on the evidence. It has no impact on this decision.

7. Decision

The Expert finds that the Third Complainant (Electrogene Limited) 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 be transferred to the Third Complainant.

Signed: Sallie Spilsbury

Dated 23 May 2016

SCHEDULE

Experts' 13a Request dated 19 April 2016

Pursuant to paragraph 13a of the DRS Procedure the Complainant is asked to provide a statement responding to the request in paragraph 5 below, with accompanying evidence if appropriate. This statement is to be provided by Wednesday 27 April 2016. The Respondent is allowed until Friday 6 May 2016 to file a further statement if he wishes, responding to the statement filed by the Complainant.

Background.

1. The Complainant is Kentec Generators Limited, which according to records at Companies House was incorporated on 2 April 2015 with company number 0954980.
2. As the Expert understands it, the Complainant's case is that it is the beneficial owner of the goodwill in the trading name "Kentec" in relation to generators.
3. Evidence filed by the Complainant appears to show previous use of the "Kentec" trading name by a company called Kentec UK Limited (company number 03849670). A Companies House search by the Expert on 12 April 2016 shows that Kentec UK Limited was dissolved on 27 May 2014.
4. The Complainant has also filed evidence showing use of the "Kentec" trading name in connection with a website found at www.kentecgenerators.com but the content of that website appears to indicate it is operated by a company called Electrogene Limited.

Request

5. In these circumstances the Complainant is asked to clarify and explain the basis upon which it says it is the beneficial owner of the relevant goodwill, including explaining: (a) how if at all it has succeeded in title to any goodwill accrued by Kentec UK Limited; (b) what the relationship is between Electrogene Limited and the Complainant and/or Kentec UK Limited; (c) what if any activity relevant to the goodwill in the term "Kentec" occurred between the dissolution of Kentec UK Limited and the formation of the Complainant; and (d) what trading activity the Complainant itself carries out.