

DISPUTE RESOLUTION SERVICE

D00018193

Decision of Independent Expert

Pet Plan Ltd

and

Mr Jimmy Greenwood

1. The Parties:

Complainant: Pet Plan Ltd
57 Ladymead
Guildford
Surrey
GU1 1DB
United Kingdom

Respondent: Mr Jimmy Greenwood
50 St Marks Crescent
Maidenhead
Maidenhead
SL6 5DG
United Kingdom

2. The Domain Name(s):

pet-plans.co.uk
pet-plans.uk

3. Procedural History:

The Expert has confirmed that (1) he is independent of each of the parties; and (2) to the best of his knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which need to be disclosed because they might be of such a nature as to call into question his independence in the eyes of one or both of the parties.

11 November 2016 19:45 Dispute received
15 November 2016 14:27 Complaint validated
15 November 2016 14:33 Notification of complaint sent to parties
02 December 2016 01:30 Response reminder sent
07 December 2016 09:21 Response received
07 December 2016 09:22 Notification of response sent to parties
12 December 2016 01:30 Reply reminder sent
14 December 2016 10:04 Reply received
14 December 2016 10:04 Notification of reply sent to parties
14 December 2016 10:04 Mediator appointed
19 December 2016 13:28 Mediation started
13 January 2017 15:02 Mediation failed
13 January 2017 15:03 Close of mediation documents sent
25 January 2017 01:30 Complainant full fee reminder sent
25 January 2017 14:52 Expert decision payment received

This Complaint was submitted after 1 October 2016, therefore Version 4 of the DRS Policy applies.

4. Factual Background

The Complainant provides pet insurance for domestic pets in the United Kingdom. It was founded in 1976, and is now a subsidiary of the general insurer Allianz Insurance plc.

The Respondent is an individual who registered the Domain Names on 18 December 2012 (pet-plans.co.uk) and 10 December 2015 (pet-plans.uk). The Domain Names are currently pointed to a holding page and a pay-per-click parking page respectively. The Complainant has sent several cease-and-desist letters to the Respondent, asking for the Domain Names to be transferred to it, but has not received a reply.

5. Parties' Contentions

The Complainant

Rights

The Complainant has been in business since 1976, based in Brentford, United Kingdom. It was acquired in 1996 by Allianz Insurance plc, one of the world's foremost financial services providers. In addition to pet insurance, it also offers insurance to pet care professionals, and provides a pet finding service. It is the world's largest pet insurer. It says that it has used the registered PETPLAN mark for nearly 20 years in connection with its pet insurance products, and the mark is distinctive and well-known.

It has a strong internet presence through its websites, owning numerous TLDs containing its PETPLAN mark, including petplan.co.uk and petplan.com. The websites associated with those domain names currently receive 400,000 and 21,000 hits per month respectively.

The Complainant is the owner of numerous trademark registrations that consist of its PETPLAN brand. These include UK, EU and US trademarks covering a wide range

of goods and services including insurance brokerage and insurance services, but also covering (for example) printed materials, clothing, education and training and the provision of legal services. The earliest registration dates from 1996.

The Complainant says the Domain Names have a high degree of similarity to its mark PETPLAN, and that the addition of the hyphen to and pluralisation of its mark should be disregarded in assessing similarity, as they fail to distinguish the Domain Names from the Complainant's mark.

Abusive Registration

The Complainant says the Domain Names fall within the definition of abusive registrations, in taking advantage of or being unfairly detrimental to its Rights, and having been used in a manner which has taken unfair advantage of or been unfairly detrimental to its Rights. In particular, the Complainant relies upon the provisions of the Policy which relate to unfair blocking, and unfair disruption of its business.

The Domain Names are confusingly similar to the Complainant's mark, which, as set out above, is very well-known due to its long use, 40 years of sales and marketing, and trademark registrations which significantly pre-date the registration of the Domain Names.

The registration of the Domain Names blocks the Complainant from posting websites on domain names which are confusingly similar to its mark, and as such is abusive.

The registration is also abusive, because the Respondent is presumably generating pay-per-click revenue from the parking page to which the Domain Names are pointed. This illegitimately allows the Respondent to profit from exploiting the fame of the Complainant's business.

The Respondent has failed to make use of the Domain Names, and has not demonstrated any attempt to make legitimate use of the Domain Names. It is not associated or affiliated in any way with the Complainant, and has not been authorized to register or use the Domain Names.

At the time of registration the Respondent knew, or at least should have known of the Complainant's mark and brand, and registration of the Domain Names containing the well-known trademark constitutes bad faith per se. The Respondent could have no legitimate purpose for registering the Domain Names, except to trade on and profit from the Complainant's goodwill in the PETPLAN mark and brand.

The Respondent is not commonly known by the name or legitimately connected with a mark which is identical to or similar to the Domain Names. The Domain Names are not generic or descriptive, and the Respondent is not making fair use of them.

The Complainant seeks transfer to itself.

The Respondent

The Respondent does not directly take issue with the Rights asserted by the Complainant. However, he says he does not have pets, and had no idea who the Complainant was.

His registration of the pet-plans.co.uk Domain Name in 2012 was nothing to do with pets or insurance plans. In his case P.E.T is an abbreviation for Personal Effectiveness Training, in the field of "NLP, Life Coaching, Leadership Coaching etc...".

The holding nature of the website is only temporary, he has been looking at a partnership with a close friend who has been training in this area for the last 5 years,

“looking to use this domain for a possible business”. Time and energy has gone into this project, with domain fees etc.
He says he has attached an image of the branding, but does not in fact do so.

The Reply

The Complainant’s Reply contains a mixture of material which seeks to amplify its Complaint, without reference to matters raised in the Response, and material which goes to respond directly to it. The former material is clearly inadmissible in accordance with para 9.2 of the Policy, and no reason is given as to why it could not have been provided earlier. The Expert therefore proposes to disregard it.

Insofar as the Reply is admissible, the Complainant takes issue with the Respondent’s contention that he has not heard of its brand, which it describes as “suspicious”, “even individuals without animals have heard of the Pet Plan brand”. In addition, when registering the Domain Names, the Respondent should have checked that it did not infringe any trademarks, and conducted a simple Google search, which would have shown up the Complainant’s brand.

The Respondent’s claim that PET-PLANS is an abbreviation for “Personal Effectiveness Training” rings hollow, as the Respondent makes no use of the Domain Names, and they do not resolve to active content.

6. Discussions and Findings

In order to succeed in its Complaint, in accordance with the Policy, the Complainant needs to establish:

- “i. The Complainant 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.”*

The Complainant needs to establish both elements on the balance of probabilities.

The definition of Abusive Registration under the Policy is 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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights”.*

The definition of Rights under the Policy is 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.”

Rights

Although the Respondent says he has not heard of the Complainant, he does not directly contest the Rights upon which the Complainant relies. The Complainant has relied upon registered trademark rights in the UK and the EU containing the PETPLAN mark, and the Expert agrees that the addition of a hyphen and pluralisation of the mark in the Domain Names is not of any significance in comparing the mark and the Domain Names. The Expert therefore finds that the Complainant has established that it has Rights in the mark PETPLAN, which is similar to the Domain Names.

Abusive Registration

Paragraph 5 of the Policy provides as follows, in relation to Abusive Registration:

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

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

5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

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

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;

5.1.2 Circumstances indicating that the Respondent is using or is 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; ...”

The Complainant particularly relies upon 5.1.1.2 and 5.1.1.3 of the Policy (although not, apparently, 5.1.2). The circumstances set out in para 5.1.1 of the Policy all concern the registrant’s motives at the time of registration of the Domain Names. The Domain Names have apparently been parked since registration, with no suggestion that the parking sites themselves interfere with the Complainant’s business. There does not appear to have been any change in behaviour by the Respondent since registration about which the Complainant objects. Consideration of the Respondent’s actions must therefore concentrate upon what he had (or might have had) in mind at the time of registration.

The Respondent says that he registered the Domain Names for what is a vague and unparticularised notion of a business venture with an (unnamed) close friend to do with Personal Effectiveness Training, which, despite the passage of 5 years since the registration of the .co.uk name, has not yet come to anything. He says he attaches branding as evidence of his plans, but fails to do so.

The Complainant say that this is suspicious, and rings hollow (with which the Expert agrees). It is effectively an attempt to rely upon the possible get-out for a Respondent in para 8.1.1.1 of the Policy, which allows the Respondent to rely on possible evidence showing that a registration is not abusive, including making demonstrable preparations to use the Domain Names or a similar name in connection with a genuine offering of goods or services, prior to becoming aware of the Complaint. The Experts' Overview, para 4.3, cautions against the unsupported assertion of plans designed to defeat a claim, which are totally unsupported by any contemporaneous evidence. Any such assertion is likely to be met with a "heavy measure of scepticism". In this case, in the Expert's view, the explanation given does not look like a credible one, and he is very sceptical that it has any substance at all. If the plan had any substance, then surely some evidence to demonstrate its existence (such as emails, or evidence of his close friend's current training business) could have been produced. However, none was. Also, the Respondent's explanation of the use of the initials PET fails to explain the remainder of the Domains Names, which is an integral part of the Complainant's branding.

Despite these considerable reservations, the Complainant must still make out its case on the balance of probabilities. Taking first its reliance upon the registrations being "blocking" ones, why should the Respondent, who is not asserted to be a competitor of the Complainant, be interested in blocking the Complainant's use of these Domain Names? The Complainant already owns the more obvious domain names incorporating its brand name (petplan.co.uk and petplan.com) as well as many others, and was apparently prepared to let the Respondent keep hold of the pet-plans.co.uk domain name for 5 years before it launched this challenge. What is the Respondent's motive for "blocking" the Complainant in this way? The Expert finds it difficult to understand what the Respondent is supposed to have gained by a "blocking" registration, and therefore regards that as an unlikely motive for registration.

As to unfairly disrupting the Complainant's business, the Complainant does not say that its business has in fact been unfairly disrupted. Again, the Expert is left with the question of why the Respondent should have intended to disrupt the Complainant's business, and if so, how? As a starting point (which is also relevant to the question of "blocking" registration), did the Respondent in fact know about the Complainant's business at all? He says he has no pets, and did not. The Complainant says that he must have done. However, although asserting in its Reply that "even individuals without animals have heard of the Pet Plan brand", it fails to support that assertion with evidence, except to refer back to its reputation, and the extent of its advertising. However, whilst producing screenshots of Google searches with links to articles about the Complainant and of its own website (undated, but all apparently from some time in 2016), the Complainant does not address the issue of what its reputation was in 2012 (when the pet-plans.co.uk domain name was registered), nor does it anywhere explain, otherwise than in general terms, what size of business it was then. No turnover figures are quoted, and although it claims to be the "world's largest pet insurer", what is its market share, and what is the total market? Why should a non-pet owner have heard of them? What was its advertising spend in 2012? Where and through what media did it advertise?

The Complainant does not appear to have any reason specifically to say that the Respondent did in fact know about it and its business. Its case just appears to be that it

and its business are so-well known that the Respondent must have had them in mind when he registered the Domain Names. If so, it should really have been more prepared to back that assertion with better evidence.

The Complainant also refers to the click-per-view revenue which it believes the Respondent must have been earning (which is not contradicted by the Respondent). The Expert's understanding is that this only applies to the pet-plans.uk Domain Name, and not the .co.uk name, which previously resolved to a holding page (but now appears unobtainable). Again, the substance of the Complainant's case is that this is reprehensible, because it takes unfair advantage of its Rights, which it says the Respondent must have known about. Use of a click-per-view site is not of itself objectionable (para 8.5 of the Policy), although Expert needs to take into account the nature of the advertising links, the nature of the Domain Names, and that the use of the Domain Names is ultimately the Respondent's responsibility. In this case, the Complainant does not complain about the nature of the advertising links (although they appear to be insurance-related), just about the earning of click-per-view revenue. So, if the Respondent cannot be shown to have known about the Complainant's Rights at the time of registration, the Complainant's objections on this account are not valid.

The Respondent does not claim to be commonly known as the Domain Names, nor that they are generic or descriptive. Therefore, the Expert does not need to address those elements of the Complaint.

The Expert is therefore left with having to choose between what in many respects is an unsatisfactory Complaint, and a most unconvincing explanation from the Respondent. The onus of proof is on the Complainant. However, in this case, the Expert feels that the apparently disingenuous nature of the Respondent's explanation of why he registered the Domain Names significantly undermines his credibility. If he is prepared to come up with such an unconvincing explanation of the choice of Domain Names, without any evidence, should the Expert believe him in his assertion that he did not know of the Complainant at the time of registration? The Expert does not feel that he should give him the benefit of that doubt. If there is no justifiable explanation for the choice of name, that casts considerable doubt on the Respondent's motives, and on balance, the Expert believes that he probably did know about the Complainant and its business at the time of registration. Also, even if he did not know of the Complainant, he should, as the Complainant has suggested, have checked the availability of such a name if he intended to use it for a business project. If he failed to do so, he cannot then be too surprised when a brand owner complains (albeit 5 years later).

Therefore, on the balance of probabilities, the Expert finds that the Complainant has established that the Domain Names, in the hands of the Respondent, are Abusive Registrations.

7. Decision

The Expert finds that the Complainant has Rights in the name or mark PETPLAN, which is similar to the Domain Names, and that the Domain Names in the hands of

the Respondent are Abusive Registrations. The Expert therefore directs that the Domain Names be transferred to the Complainant.

Signed ...Bob Elliott

Dated 15 February 2017