

DISPUTE RESOLUTION SERVICE

D00018310

Decision of Independent Expert

KEEN, Inc. and KEEN Europe Outdoor B.V.

and

Speed Global Marketing LLC

1. The Parties:

First Complainant: KEEN, Inc.
515 NW 13th Avenue
Portland
Oregon
97209
United States

Second Complainant: KEEN Europe Outdoor B.V.
Lloystraat 62
Rotterdam
3024EA
The Netherlands

Respondent: Speed Global Marketing LLC
1621 Central Ave
Cheyenne
Wyoming
WY 82001
United States

2. The Domain Name:

keenfootwear.co.uk

3. Procedural History:

On 13 December 2016 the Dispute was received and validated by Nominet on 14 December and notification of same was sent to both parties. On 05 January 2017, a Response reminder was sent but by 10 January no Response has been received and notification of this was sent to both parties the same day. On 20 January, a summary/full fee reminder was sent to the Complainants and on 25 January the Expert decision payment was received by Nominet. The Expert – Tim Brown – was appointed on 07 February.

I confirm that I am independent of all 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 all the parties.

4. Factual Background

The First Complainant - KEEN, Inc. - is a business located in Oregon, United States of America. The Second Complainant - KEEN Europe Outdoor B.V. – is a related company located in Rotterdam, The Netherlands.

The Complainants are concerned with the manufacture and sale of outdoor, lifestyle, waterfront and active footwear and have done so globally since 2003. The Complainants have manufactured and sold backpacks and bags since 2006 and outdoor and leisure clothing since 2013.

The Complainants products are available through over 6,000 authorised online retailers and in “bricks and mortar” shops in more than 70 countries. The Complainants say that their sales figures for 2015 exceeded USD\$332m and that they have won a number of awards including European Outdoor Gold Winner Industry Award in 2015 for innovation and design.

The Complainants operate a website at the URL www.keenfootwear.com and have done so since 2003. The Complainants also operate a large number of country-specific websites using the term KEENFOOTWEAR and the relevant local country code top level domain name.

The Respondent did not reply to these proceedings.

The Domain Name was registered on 09 February 2014 and, according to the screenshots provided by the Complainants and Nominet, the website associated with the Domain Name does not resolve. There is no indication before me as to whether the Domain Name is used for email or other Internet services.

5. Parties’ Contentions

Complainants – Rights

The Complaints contend that they, singly or together, are the registrants of a large portfolio of global trade marks predominately for the term KEEN. The Complainants have exhibited extracts from various trade mark databases to demonstrate these rights.

The Complainants say they are the registrant of a large number of domain names made up of the term KEENFOOTWEAR and various generic and country code top level domain names, which have been listed.

The Complainants note that they have not assigned any rights to the Respondent.

Complainants – Abusive Registration

The Complainants say that the Domain Name contains the KEEN trade mark in its entirety plus the “generic modifies [sic.] ‘Footwear’”. The Complainants aver that “Numerous panels have found the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish confusing similarity for purposes of the Policy” and has referred to several cases which were decided under the Uniform Domain Name Dispute Resolution Policy (“UDRP”), rather than the Dispute Resolution Service (“DRS”) Policy which applies to the current dispute.

The Complainants contend that the use of "KEENFootwear" in the Domain Name "provides an overall impression of the designation of the Disputed Domain Name is one of 'being connected to the trademark of the Complainant.'" Again, the Complainants have relied on several cases decided under the UDRP.

The Complainants say they have not authorised the Respondent to use its KEEN trade marks. The Complainants further contend that the Respondent does not have any rights relating to the KEEN mark or brand and that it is inconceivable that the Respondent registered the Domain Name without the Complainants' mark in mind. The Complainants suggest that such actions are evidence of bad faith.

The Complainants aver that the Respondent registered the Domain Name for the purpose of selling, renting or otherwise transferring it to Complainants or Complainants' competition at a price greater than his/her cost because Respondent has no right in the name KEEN or KEEN Footwear.

The Complainants say that the Respondent does not have an active website associated with the Domain Name.

The Complainants contend that they believe Respondent primarily registered the Domain Name to "stop Complainants from registering despite Complainant's rights in the name" and that because Respondent has "essentially parked" the Domain Name the Complainants also believe the Respondent primarily registered the Domain Name to unfairly disrupt the Complainants' business.

Respondent

As noted above the Respondent has not filed a response to these proceedings.

6. Discussions and Findings

Complainants' Rights

As set out above, the Complainants own a large portfolio of registered marks in a variety of jurisdictions relating to the term KEEN and it is clear that they enjoy extensive rights in the term KEEN.

The Domain Name differs only from the KEEN mark by the addition of the word "footwear" and the .co.uk suffix.

I take the view that the term "footwear" is one that it is very closely related to the Complainants' business and activities, so much so that I note the Complainants' primary website is operated from the URL www.keenfootwear.com. The additional word does nothing to distinguish the Domain Name from the Complainants' mark and may indeed increase the likelihood of confusion.

As is customary in DRS proceedings, I note that the .co.uk suffix is required only for technical reasons and can be ignored for the purposes of comparing the mark to the Domain Name.

I therefore find that the Complainants have rights in respect of a name or mark which is similar to the Domain Name in terms of Policy 2.1.1.

Abusive Registration

As I set out above, the Complainants have suggested that the Domain Name is Abusive for most of the reasons set down in paragraphs 5.1.1 (and sub headings thereof) and 5.1.2. I will consider each of the Complainants' submissions which are relevant to this dispute and the DRS Policy.

The Complainant says that the Respondent registered the Domain Name "for the purpose of selling, renting or otherwise transferring it to Complainant or Complainant's competition at a price greater than his/her cost because Respondent has no right in the name KEEN or KEEN Footwear." The Complainants have not put forward evidence to support this claim. Such evidence might include correspondence showing the Respondent approached the Complainants in order to sell the Domain Name; or that the Domain Name resolved to a website offering the Domain Name for sale. Without any such evidence, I cannot see that the Complainants' submission on this point has any particular merit.

The Complainants contend that the "Respondent does not have an active website associated with the Domain KEENFootwear.co.uk" and that "because Respondent has essentially parked the domain KEENFootwear.co.uk, Complainant also believes it primarily registered to unfairly disrupt Complainant's business."

This supposition is incorrect. Paragraph 5.2 of the Policy specifically notes that "failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration."

The Complainants have also contended that "given Complainant's established use of the KEEN Trademarks beginning in 2003, and its registrations of the KEEN Trademarks throughout the world, the earliest in 2004, it is inconceivable that Respondent chose the Disputed Domain Name without knowledge of Complainant's activities and the name and trademark under which Complainant is doing business".

This issue is the crux of this dispute. Is it more likely than not that the Domain Name, which is inactive, will (to paraphrase the Policy at Paragraph 5.1.2) confuse web users into believing it is operated or authorised by the Complainants?

I have examined the Complainants' submissions carefully and note that it is clear that the Complainants are both part of a very substantial entity which enjoys both significant sales figures and a geographically diverse presence throughout the world. It is also clear that footwear is a vital and intrinsic part of the Complainants' raison d'être and a term therefore very closely associated with the Complainants. Equally, I note that the Complainants operate their online presence via "keenfootware" domain names in nearly 30 country code spaces and in many generic top level domain spaces and have done so for some time. KEEN FOOTWEAR is a term intrinsically, inherently and widely associated with the Complainants and extensively used by them.

With these circumstances in mind, the question is whether there is *any* use to which the Respondent could put the Domain Name which would not confuse web users and therefore would not render the Domain Name Abusive.

In the absence of any good (or indeed any) explanations from the Respondent, I consider that it is just more likely than not that the Domain Name may confuse users and that it follows that it must be Abusive in terms of Policy 5.1.2.

7. Decision

Having determined that the Complainant has Rights in respect of a name and mark that are similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive registration, I order that the Domain Name is transferred to the First Complainant.

Signed Tim Brown

Dated 14 February 2017