

DISPUTE RESOLUTION SERVICE

D00018441

Decision of Independent Expert

Scottish Power Energy Retail Limited

and

Tulip Trading Company Limited

1. The Parties:

Complainant:

Scottish Power Energy Retail Limited

1 Atlantic Quay

Robertson Street

Glasgow

Glasgow

G2 8SP

United Kingdom

Respondent:

Tulip Trading Company Limited

Dixcart House Fort Charles

Charlestown

Nevis

00000

Saint Kitts and Nevis

2. The Domain Name:

<wwwscottishpower.co.uk>

3. Procedural History:

27 Jan. 2017 Dispute received
31 Jan. 2017 Complaint validated
31 Jan. 2017 Notification of Complaint sent to parties
17 Feb. 2017 Response reminder sent
22 Feb. 2017 No Response Received
22 Feb. 2017 Notification of no response sent to parties
01 Mar. 2017 Expert decision payment received
02 Mar. 2017 Expert appointed

I can confirm that I, the undersigned Expert, 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 a such a nature as to call into question my independence in the eyes of either of the parties.

4. Factual Background

The Complainant was incorporated on 14 October, 1998. It is a member of the group of companies headed in the United Kingdom by Scottish Power UK plc, which in turn is owned by the Spanish energy company, Iberdrola. The Complainant's principal activity is the supply of gas and electricity to domestic and business customers in Great Britain.

Scottish Power UK plc is the registered proprietor of a number of UK trade mark registrations of or including the name, "Scottish Power". One such registration is No. 01493255 SCOTTISH POWER (words) in classes 35, 37, 39, 40 and 42 for a wide variety of services directly or indirectly related to the supply of gas and electricity. The mark was applied for on 4 March, 1992 and registered on 12 May, 1995.

The Scottish Power website is connected to the domain name, <scottishpower.co.uk>, which was registered on 24 August, 1996 and is held in the name of Scottish Power Limited, another company in the group of companies ultimately owned by Iberdrola.

While the Complainant (Scottish Power Energy Retail Limited), the SCOTTISH POWER trade mark owner (Scottish Power UK plc) and the operator of the Scottish Power website (Scottish Power Limited) are three different entities, the Expert is satisfied on the balance of probabilities (having verified the position by visiting the online databases of the UK Intellectual Property Office and Companies House) that they are under common

ownership and that it would be appropriate for the purposes of this decision to treat them as one. The Expert would have found it helpful if the Complaint had addressed this issue.

The Domain Name was registered by the Respondent on 14 October, 2016 and is connected to a Pay-per-Click parking page featuring advertising links to a variety of entities engaged in the energy industry, including the website of the Complainant and websites of competitors of the Complainant.

5. Parties' Contentions

The Complainant contends that its trading name and registered trade mark, "Scottish Power", is similar to the Domain Name.

The Complainant contends that the Domain Name in the hands of the Respondent is an Abusive Registration on a number of grounds, namely:

- (i) The Domain Name is substantially identical to "Scottish Power", the name in respect of which the Complainant has common law rights and registered trade mark rights.
- (ii) The manner in which the Domain Name is being used (i.e. for a pay-per-click parking page featuring links to the Complainant's website and to various energy-related sites, being sites of the Complainant's competitors) makes it clear that the Respondent is aware of the Complainant and its "Scottish Power" business.
- (iii) The Domain Name was selected in order to create a false impression of association with the Complainant to attract business from the Complainant or misleadingly to divert the public from the Complainant to the Respondent or to cause disruption to the Complainant's business and might be used for 'phishing'.
- (iv) The Domain Name has no legitimate purpose. It is being used without the Complainant's permission to derive pay-per-click revenue from advertising links to various energy-related sites, some of which are sites of the Complainant's competitors.
- (v) The Domain Name has been registered primarily for the purpose of blocking the Complainant from acquiring a domain name which corresponds to its registered trade marks.
- (vi) The Respondent is not known by the Domain Name.
- (vii) The Respondent must have been aware that in registering the Domain Name it was misappropriating the valuable intellectual property of the owner of the SCOTTISH POWER trade mark and infringing the Complainant's trade mark rights.
- (viii) The Complainant asserts that it wrote warning letters to the Respondent seeking transfer of the Domain Name, but received no replies, which it says is indicative of the Respondent's bad faith.
- (ix) There have been several Nominet and UDRP cases in which the

Respondent has been found guilty of having registered abusive registrations and it is contended that the Domain Name is part of this pattern.

- (x) There is nothing *bona fide* about the Respondent's activity in relation to the registration or use of the Domain Name.

The Respondent has not responded to the Complaint

6. Discussions and Findings

General

Pursuant to paragraph 2.1 of the Policy, for the Complainant to succeed in this Complaint it must prove to the Expert on the balance of probabilities that:

- I. It 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.

Paragraph 2.2 of the Policy provides that the Complainant is required to prove that both the above elements are present on the balance of probabilities.

“Abusive Registration” is defined in paragraph 1 of the Policy as 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 used or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

Rights

The Complainant has demonstrated that it has registered trade mark rights in respect of its “Scottish Power” brand.

The Domain Name at the third level comprises the letters “www” (the acronym commonly used at the front of a domain name to indicate a web address) and the Complainant's name and trade mark, “Scottish Power” (albeit without the intervening space).

It being permissible for the Expert to exclude from consideration the first and second levels of the Domain Name (“.co.uk”), which serve no purpose other than a technical one, the Expert finds that the name or mark in respect of which the Complainant has rights is similar to the Domain Name.

The Expert observes that if there had been a stop following the “www” pre-fix, the Domain Name would have replicated precisely the Complainant’s web address

Abusive Registration

Paragraph 5.1 of the Policy sets out a non-exhaustive list of factors, “which may be evidence that the Domain Name is an Abusive Registration” and, as can be seen from section 5 above, the Complainant has leveled the full range of them at the Respondent.

For present purposes the Expert regards it as unnecessary to address all those allegations, despite the fact that some of them are likely, in the view of the Expert, to be soundly based.

Paragraph 5.1.2 of the Policy provides that among the non-exhaustive list of factors “which may be evidence that the Domain Name is an Abusive Registration” are “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.”

The Complainant’s evidence supports the Complainant’s contention that the Complainant’s “Scottish Power” name and trade mark is very well-known in the United Kingdom. While it is just possible that someone might innocently select that name or something similar to it for its descriptive quality, to have preceded it with the “www” acronym and omitting the full stop and then to have connected the Domain Name to a pay-per-click parking page featuring energy-related links makes it plain, in the view of the Expert, that the Respondent was seeking to replicate as closely as possible the Complainant’s web address with a view to causing confusion and deriving pay-per-click revenue from visitors to the website. The Expert agrees with the Complainant that there is no other explanation.

Had there been an explanation one would have expected the Respondent to have responded to the Complaint. In the absence of a Response the Expert is entitled to infer (see paragraph 24.8 of the Policy) that the Respondent has no answer to the Complainant’s contention that the Domain Name is an Abusive Registration.

In the absence of any explanation from the Respondent seeking to justify its adoption of the Domain Name, the Expert finds that the Domain Name is an Abusive Registration within the definition of that term in paragraph 1 of the Policy. The Expert finds on the balance of probabilities that the Respondent registered the Domain Name

and has been using it to take unfair advantage of the Complainant's Rights.

For completeness, the Expert should point out that it has ignored the Complainant's contentions based on the failure of the Respondent to have responded to the Complainant's warning letters, because the letters were not produced in evidence. Bare assertions are not enough.

7. Decision

The Expert directs that the Domain Name be transferred to the Complainant.

Signed:

Dated: 3 March, 2017