

UNSIGNED



NOMINET

DISPUTE RESOLUTION SERVICE

D00019466

Decision of Independent Expert

Prestige Stairlifts Ltd

and

Anthony Ashworth

1. The Parties:

Lead Complainant: Prestige Stairlifts Ltd
Prestige Stairlifts Ltd
48 St Leonards Road
Bexhill On Sea
East Sussex
TN40 1JB
United Kingdom

Respondent: Anthony Ashworth
10 Cuphill Close
Droitwich
Droitwich
WR9 7GD
United Kingdom

2. The Domain Name(s):

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

30 October 2017 10:24 Dispute received
 31 October 2017 11:27 Complaint validated
 31 October 2017 11:30 Notification of complaint sent to parties
 17 November 2017 01:30 Response reminder sent
 21 November 2017 14:33 Response received
 21 November 2017 14:33 Notification of response sent to parties
 24 November 2017 01:30 Reply reminder sent
 27 November 2017 10:40 Reply received
 27 November 2017 10:40 Notification of reply sent to parties
 28 November 2017 15:30 Mediator appointed
 30 November 2017 14:21 Mediation started
 18 December 2017 17:38 Mediation failed
 18 December 2017 17:38 Close of mediation documents sent
 01 January 2018 01:30 Complainant full fee reminder sent
 04 January 2018 09:10 Expert decision payment received

4. Factual Background

- 4.1 The Complainant is a company incorporated on 23 March 2006 which installs, repairs, services and removes stairlifts. It registered its domain name - prestigestairlifts.co.uk on 4 April 2006. It operates in the South East of England with offices in Sussex, Surrey and Kent. It has approved status with Trading Standards and is accredited with Which ? Trusted Trader and Checkatrade.
- 4.2 The Respondent named is Anthony Ashworth, ('the Registrant') However the party which has filed the Response is Mitchell Watton who states that the Registrant was a friend who made his website and that the Domain Name is now under his name. A Nominet who is search conducted by the Expert as at 5 January 2018 demonstrates that the Registrant is still Anthony Ashworth. The Expert will refer to Mitchell Watton as the Respondent in this decision from now on as he appears to be the party who is actually using the Domain Name, presumably with the Registrant's permission. The Expert considers that the Complaint is properly addressed to the Registrant of the Domain Name, but it is appropriate for her to take into account the submissions made in the Response filed by the user of the Domain Name.
- 4.3 The Domain Name was registered by the Registrant on 11 July 2017.

The Respondent operates a website at the Domain Name and has registered the limited company Prestige Stairlifts Services Limited as at 6 November 2017 after his

receipt of the Complaint. The Respondent's website offers stairlifts for sale/installation and stairlift related services.

Parties' Contentions

5. The Complaint

5.1 The Complainant contends as follows:-

- 5.1.1 He has an expanding company with ambitions to cover a wider area than South East England where it currently operates, as the business grows.
- 5.1.2 He recently discovered the Respondent company on the web using the Domain Name and believes the Respondent's company name and Domain Name are too similar to his name and that it is trading unfairly by benefitting from his well-established company name and reputation.
- 5.1.3 He strongly feels that his customers (new and existing) are being misled into believing the Respondent is somehow connected to him, as both provide identical services which means confusion is imminent.
- 5.1.4 For 11 years the Complainant has used his domain name (Prestige Stairlifts.co.uk) and company name Prestige Stairlifts Limited and has worked extremely hard to build a reputable business with approved status, with three independent bodies. He also has over 400 independent customer reviews on one of these – Checkatrade -which demonstrates that he is a well-established company with many satisfied customers. The Respondent is dishonestly benefitting from the independent testimonials and accreditation of the Complainant and his reputation and credibility
- 5.1.5 The Respondent's use of the Domain Name is a "spoof" and easily misleads users to believe that it also has the same standards of excellence as the Complainant due to the company name and Domain Name being practically identical to those of the Complainant.
- 5.1.6 At the time of filing the Complaint the Respondent did not have a limited company registration. It only filed this on 6 November 2017 after it had received notice of the Complaint.
- 5.1.7 The Complainant's domain name and the Domain Name read as one and the same company to users. He has operated under its domain name for 11 years whereas the Respondent only registered the Domain Name three months ago.
- 5.1.8 Both the Complainant's domain name and the Domain Name cover the same locality to users.
- 5.1.9 The Domain Name is an Abusive Registration and the Complainant relies upon the following sub paragraphs of paragraph 5 of the Policy to establish this:

Paragraph 5.1.1.3-*It has been registered for the purpose of unfairly disrupting the business of the Complainant.* Here the Complainant cites loss of business due to service users mistakenly arriving at the Respondent's domain and then believing it belongs to the Complainant.

Paragraph 5.1.2 - *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 says this is indeed the case whereby people will not necessarily know the difference between the Respondent's domain and that of the Complainant's as the name is virtually identical and has the same meaning.

Paragraph 5.1.3-*The Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well-known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern.* Here the Complainant states that the Respondent clearly knew that the domains prestigestairlifts.co.uk and prestigestairlifts.com were taken, yet deliberately purchased prestigestairliftsservices.co.uk knowing this contravened the Complainant's domain and trading name. Notably prestigestairlifts.com is also registered in the name of the Complainant and the registration was filed on 17 March 2006.

Paragraph 5.1.6 - *The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name.* Here the Complainant states that his core business is to provide a service and so the addition of services after Prestige Stairlifts in the Domain Name certifies it is the Complainant who is providing the services. People understanding the English language will automatically assume both domain names are one and the same company. The reputation the Complainant has built with his name gives the Respondent no reasonable justification for having registered the Domain Name in the first place.

5.1.10 The Complainant has produced evidence as follows:

His company registration, the fact that the Respondent company was not registered at the time of the Complaint, his company brochure, customer and supplier invoices addressed to it and correspondence from a third party regarding a grant contract from the Council. He also provides correspondence from a third party in relation to a rent invoice, copies of the Complainant's website at his domain and copies of the Respondent's website at the Domain Name. He provides links to show his approved status with Trading Standards and that he is accredited with Which ? Trusted Trader. Lastly he provides the results of a Google AdWords search and of a google search for Prestige Stairlifts. The latter brings up websites for both parties.

The Response

5.2 The Respondent argues as follows:-

- 5.2.1 The registration of the Domain Name was by the Registrant who is a friend which made his website. The Domain Name is now under the name Mitchell Watton who has filed the Response.
- 5.2.2 The Respondent feels he has the right to use the Domain Name as it was readily available through 123 Reg and also at Companies House. He has purchased the company name Prestige Stairlift Services Limited at Companies House.
- 5.2.3 He has a well-established website (*sic*) within Worcestershire and the Birmingham area and has started to create a customer database.
- 5.2.4 Having now been made aware of the Complainant which has a similar name, he notes that they are based in East Sussex, approximately 153 miles away from his advertisement area. The Respondent only advertises within a 50 mile radius with Google.
- 5.2.5 He has been told that the Complainant could have purchased the Domain Name at any time. It would cause the Respondent a lot of time and money if it had to change the Domain Name website and limited company name, as well as the hassle of sending letters to each customer he has already been to.
- 5.2.6 He feels he has the right to the Domain Name as he bought it and it could have been purchased by the Complainant or anyone else who wanted to trade under it or didn't want anyone else to trade under this name. He is also the owner of Prestige Stairlift Services Limited which gives him the right to use the Domain Name.

The Reply to the Response

5.3 The Complainant does not accept the reasons given in the Response and contends as follows:-

- 5.3.1 The claim in the Response is that the Respondent only advertises with Google within a 50 mile radius, which is untrue. The Complainant has provided evidence that the Respondent's Google AdWords were displaying (alongside the Complainant's) from the Complainant's home town in Bexhill, Sussex, which is 153 miles outside of that 50 mile radius.
- 5.3.2 Suppliers are in fact confused. The Complainant has received email correspondence addressed to the Respondent (Mitchell Watton) but being sent to info@prestigestairlifts.co.uk which is the Complainant's domain name. The email in question is attached to the Reply to the Response dated 27th November 2017. The Complainant is concerned that the situation could become much worse and stairlift suppliers will start to invoice it for orders being made by the Respondent. He has accounts with all the main stairlift suppliers so unless this dispute is

resolved there will be a plethora of confusion and mistakes that will be detrimental to the Complainant's business.

5.3.3 Since the Respondent received the Complaint it has now registered Prestige Stairlift Services Limited with Companies House on 6 November 2017.

5.3.4 The Complainant has taken 11 years to build up its company and earn an outstanding reputation under his name. In contrast the Respondent has only been operating for a matter of months. In the long run if the Respondent does require to move to a new domain it will actually benefit from this investment as confusion will end.

6. Discussions and Findings

General

6.1 To succeed in the Complaint, the Complainant has to prove that, pursuant to paragraph 2 of the Policy, on the balance of probabilities:

2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and

2.1.2 The Domain Name in the hands of the Respondent, is an Abusive Registration.

Paragraph 1 of the Policy defines Rights as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”

Complainant's Rights

6.2 The Complainant registered his company as Prestige Stairlifts Limited on 23 March 2006 and its domain Name prestigestairlifts.co.uk on 4 April 2006. He has been operating under both of these (together “the Brand”) for some 11 years to build his company into a reputable business. He also registered the domain name prestigestairlifts.com on 17 March 2006.

6.3 He has gained approved status with Trading Standards and accreditation with Which? Trusted Trader and Checktrade and has many independent customer reviews on Checktrade alone. The Respondent does not deny the Complainant's assertions about his reputation and history of use of the Brand.

6.4 The Expert considers that the Brand is not entirely descriptive and is a term which is capable of acquiring a secondary meaning. Given the length of use by the Complainant the Expert considers that there is likely to have been significant goodwill and reputation generated under it. Thus the Expert considers that on the balance of probabilities that the Brand is likely to have acquired such a secondary meaning in this case.

- 6.5 Comparing the Brand with the Domain Name Prestigestairliftservices.co.uk, the only differences between them is the added word services, the omission of the “s” and the suffix. The word PRESTIGE is the more distinctive part of the Domain Name and serves the trademark function. The omission of the “s” is immaterial and the addition of the word “services” is purely descriptive. The Brand and the Domain Name are therefore similar.
- 6.6 The Expert therefore concludes that the Complainant has Rights in a name or mark which is similar to the Domain Name.

Abusive Registration

- 6.7 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 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.”*
- 6.8 This definition requires the Expert to determine whether the Domain Name is an Abusive Registration either at the time of registration/acquisition or subsequently through the use that has been made of it.
- 6.9 The Policy provides that it is for the Complainant to prove, on the balance of probabilities that the Domain Name is an Abusive Registration. The burden of proof is therefore firmly on the Complainant.
- 6.10 Paragraph 5 of the Policy provides a non-exhaustive list of the factors which may constitute evidence that a Domain Name is an Abusive Registration and paragraph 8 of the Policy provides a non-exhaustive list of the factors which may constitute evidence that the Domain Name is not an Abusive Registration.

Prior Knowledge/Intention

- 6.11 The Complainant claims that *‘the Respondent clearly knew the domains Prestigestairlifts.co.uk and Prestigestairlifts.com were taken yet it deliberately purchased the Domain Name knowing this contravened its company’s name and trading name’*. He provides no evidence of this.
- 6.12 The Respondent suggests he was unaware of the Complainant and its business prior to registering the Domain Name. He states *‘having now been made aware that there is another company with a similar name, I have looked at this company and they are based in East Sussex, which is approximately 203 miles away, which is over 153 miles away from my advertising area. I only advertise within a 50 mile radius with Google.’* The Complainant does not deny this in its Reply to the Response.
- 6.13 The Respondent does not explain exactly how or why he chose the Domain Name or suggest that the selection was made on his behalf and without his knowledge by the Registrant. However, the Expert considers it more likely than not that the Respondent would have had input to that process and would have approved and instructed its registration.

- 6.14 At the nub of the Policy, is the requirement to prove unfairness and thus for a registration to be considered 'abusive' there should be something unfair in the object or effect of the Respondent's behaviour. Knowledge of a Complainant and/or its rights is a crucial element in most cases, but particularly so if the Domain Name consists of an expression or combination of words in fairly wide use.
- 6.15 The importance of knowledge on the part of a respondent is illustrated by the 2007 DRS Appeal Panel decision in *Verbatim Limited v Michael Toth (DRS 4331)*, in which it was said:
- '8.13. In this Panel's view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:*
- (1) First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights.*
 - (2) Secondly, 'knowledge' and 'intention' are pre-requisites for a successful complaint under all heads of paragraph 3(a)(i) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.*
 - (3) Thirdly, 'intention' is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.*
 - (4) Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights.*
 - (5) Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present.'*
- 6.16 Some of the relevant questions to ask are therefore how well known the Brand was and whether the Respondent was aware of it and the Complainant's Rights. Also did the Complainant intend confusion to arise. The Respondent was intending to enter the same UK market ie stairlifts and related services as the Complainant and as such it seems reasonable to infer that he would have done some research on his competitors (in what seems to be a niche area of business) before adopting the Domain Name and so would have come across the Complainant. Even assuming that was not the case, it seems doubtful that he did not at least know of the Complainant's domain names before he registered the Domain Name.

- 6.17 The Brand is not entirely descriptive. The word “Prestige” is not necessarily descriptive of stairlifts and whilst it is a common laudatory word, it seems to the Expert to be a strange coincidence that the Respondent should just happen to land on it as part of his company name and the Domain Name. The Respondent adopted a name including the word “Prestige” which is the distinctive part of the Complainant’s name. It seems unlikely that the Respondent chose this name independently without any prior knowledge of the Complainant.
- 6.18 In addition whilst the Domain Name includes the word ‘services’ the Respondent’s website makes it clear that he/it also sells stairlift products. For example on the Home Page it states ‘*whatever your home requires, we will provide a stairlift to meet your needs at affordable prices*’. It also offers 12 month guarantees on all its stairlifts. Indeed his main business seems to be the sale of actual stairlifts and the service packages are offered in addition on the back of these. The question is therefore why the Respondent adopted the name Prestige Stairlift **Services** Limited (emphasis added) and the Domain Name, as these names focus on services as opposed to goods. It seems reasonable to infer that domain name searches were carried out to ascertain what names were free and that the Complainant’s domain names became apparent as a result.
- 6.19 The Expert considers it reasonable in these circumstances to infer that the Respondent chose the Domain Name with at least some knowledge of the Complainant, as his competitor, in mind. Of course the Respondent suggests that it was the Registrant who actually registered the Domain Name as part of the design of his website. Even if so, and the Respondent did not actually carry out any searches, it is likely that he would have discussed the choice of Domain Name with the Registrant, and would have approved the final choice of the Domain Name for his website and business.
- 6.20 Thus the Expert considers on the balance of probabilities that the Respondent did know of the Complainant’s domain names and business before he registered the Domain Name and nonetheless adopted it and a similar trading/corporate name for his Stairlift business.
- 6.21 For completeness even if the Respondent did not have such prior knowledge or the intention to benefit from the Complainant’s goodwill this would not make any difference to the Expert’s decision here insofar as it depends on paragraph 5.1.2 of the Policy as below.

Respondent’s Company Name

- 6.22 The Respondent states that he purchased the Limited Company name “Prestige Stairlift Services Limited” and that as he is the owner of this this gives him the right to use the same domain name. Of course this is incorrect but more notably the Respondent only registered the relevant company name after the Complaint had been received by him. The Complaint was sent to the Respondent on 31 October 2017, whereas the Respondent’s company name was registered on 6 November 2017.

- 6.23 Paragraph 8 of the Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. Whilst the Respondent does not rely directly on any of these the most pertinent one is paragraph 8.1.1. This states that ‘*Before being aware of the Complainant’s cause for the Complaint (not necessarily the Complaint under the DRS), the Respondent has:*
- 8.1.1.1. used or made demonstrable preparation 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....”*
- As above the Respondent suggests that he did not know of the Complainant at the time that he registered the Domain Name and that he uses it for genuine services and did so before he became aware of the grounds of Complaint. The genuine services concerned are identical to those offered by the Complainant and, as noted above, also include identical products.
- 6.24 Paragraph 4.2 of the Expert’s Overview provides guidance on what is meant by ‘*Before being aware of the Complainant’s cause for the Complaint*’. It states that ‘*Matters which arise only after the Respondent has become aware of the Complainant’s name or mark forming the basis of the Complaint are more likely to have been contrived for the purpose of defending an apprehended Complaint or legal action.*’
- 6.25 In the Expert’s view on the balance of probabilities it is likely that the Respondent registered his company name in order to try to provide him with a further basis to defend his position in this dispute. The fact that he only registered the company name after the Complaint was received by him smacks of an ex post facto attempt to justify his position.
- 6.26 The registration and use of the company name is also likely only to exacerbate any confusion which may be caused as below. In any event the Expert considers that the Respondent did commence use of the Domain Name after he became aware of the cause for complaint i.e. the Complainant’s domain name/competing business. Even if that is not correct the application of paragraph 8.1.1 here does not necessarily lead to a conclusion that this was not an Abusive Registration.

Policy Provisions on which the Complainant relies

- 6.27 The Complainant relies upon various provisions of the Policy as applicable here to demonstrate an Abusive Registration. The Expert now deals with these in order –
- Paragraph 5.1.1. *Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*
- Paragraph 5.1.13 *for the purpose of unfairly disrupting the business of the Complainant.*
- 6.28 The Complainant alleges that there will be loss of business due to service users mistakenly arriving at the Respondent’s domain and then believing it belongs to the Complainant. Notably the Policy requires this to have been the primary purpose at the time of the registration for acquisition of the Domain Name. As above the Expert has found that the Respondent knew of the Complainant’s domain names and business before he registered the Domain Name. Thus the Respondent must have registered it

in the knowledge that he would benefit unfairly from use of it and the goodwill built up by the Complainant over 11 prior years of trading in the same business area. However on the balance of probabilities the Expert considers that unfair disruption of the Complainant's business as such would not have been the primary purpose at the time of registration as the Respondent would also have wanted to use the Domain Name to promote his own business. Thus this ground is not established.

Paragraph 5.1.2 *'Circumstances indicating that the Respondent is using or threatening to us 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.'*

- 6.29 Here the Complainant states that *"this is indeed the case whereby people will not necessarily know the difference between the Respondent's domain and my own as the name is virtually identical and has the same meaning."* There is no evidence of actual confusion by customers as yet. However the Respondent had only been trading for three months or so prior to the Complaint being filed. The Domain Name is similar or almost identical to the Complainant's name and domain name and the respective parties trade in the same type of services i.e. servicing of stairlifts and indeed stairlifts as goods.
- 6.30 The Respondent's Google Ad Words advertising reaches as far as the Complainant's business location. Also the nature of the internet is such that the Respondent's website will reach a UK/worldwide audience which is not restricted to the geographical area of his offices. Whilst the Respondent argues that the different locations are important, presumably in an attempt to contend that as a result there will be no confusion, this will not in the Expert's view cut down the possibility and risk of confusion occurring. The parties are in direct competition with each other in what is likely to be a niche area which would enhance the prospects of customer confusion and in any event there is evidence of actual supplier confusion already.
- 6.31 In the circumstances the Expert considers that it is more likely than not that there will be confusion amongst customers in future if such has not already occurred. There is virtual identity of names and the parties are trading in the same services and goods. In this case the Domain Name contains (with a very minor and non-distinctive addition – "services") the name or mark in which the Complainant has Rights. The google search results produced for 'Prestige Stairlifts' bring up both parties' websites.
- 6.32 Thus it is highly likely that internet users looking for the Complainant's website may go to the website of the Respondent in error believing it is the Complainant's site and once there may or may not continue to believe this to be the case. Either way there will have been confusion caused. The Expert notes that initial interest confusion may suffice to constitute an Abusive Registration under the Policy.
- 6.33 Furthermore there is evidence of actual confusion by a third party supplier. An email from Paige Bellwood as a third party supplier to the Respondent dated 24 November 2017 has been produced by the Complainant. This was sent to the Complainant in error at his domain name info@prestigestairlifts.co.uk. It is addressed to the Respondent and refers to an order for a pallet being ready to collect on Monday 27th. It is also more likely than not in the Expert's view that there will have been other instances of confusion which have not yet come to light amongst customers and suppliers and the problem is only likely to increase as time moves on.

- 6.34 The second limb of the definition of an Abusive Registration concentrates on the effects of the subsequent use of the Domain Name. The Expert in the case of DRS 12519 stated that in his view *'It would be going too far to say that it can never be made out in the absence of the Respondent's knowledge of a complainant or its Rights. But it does require the manner of use of the relevant domain name to be unfair, by either taking advantage or being unfairly detrimental to the Complainant's Rights.'* The Expert in that case in which knowledge was flatly denied conducted an overall assessment of the fairness of the manner of use and decided that the use was not abusive. However the facts were quite different to those at play here.
- 6.35 Even if the Respondent did register and use the Domain Name in ignorance of the Complainant's Rights this is not a case where in the Expert's view confusion is likely to be very limited.
- 6.36 In DRS 0586 the Appeal panel made it clear that *"The test of Abusive Registration under the Policy has to have an objective element to it, but not all unintentional infringement will avoid a finding of Abusive Registration."* The Panel gave the specific example of a Respondent who adopts an ostrich approach of having his head in the sand being unlikely to get much sympathy from any Expert. In this case, even if any infringement was unintentional, were the Respondent to have allowed the Registrant to have taken major decisions on the choice /registration of the Domain Name on his behalf, or even if he had ignored any relevant domain name search results, might well be viewed as having taken such an approach.
- 6.37 In this case the Expert takes the view that on the balance of probabilities, even without actual knowledge and deliberate intention, the Respondent is gaining or causing damage by way of passing off given the confusion and likelihood of it and that the registration and use of the Domain Name is unfair. The Expert has also decided that the Respondent at least knew of the Complainant's domain names and business prior to his registration and use of the Domain Name. If correct this would in the Expert's view only add more reasons for a finding of an Abusive Registration.
- 6.38 Paragraph 5.1.3 *'The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the Registrant of domain Names (under .uk or otherwise) which correspond to well-known names or trademarks in which the Respondent has no apparent Rights, and the Domain Name is part of that pattern.'* The Complainant asserts that the Respondent clearly knew that the domains prestigestairlifts.co.uk and prestigestairlifts.com were taken, yet deliberately purchased prestigestairliftservices.co.uk knowing this contravened his company and trading name. In the Expert's view this ground under 5.1.3 is not applicable here and is intended to deal with a different set of circumstances in which the Respondent has made previous registrations of domain names which are well-known and in which it has no apparent rights etc.
- 6.39 Paragraph 5.1.6 *'The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name.'* Under this heading the Complainant alleges that its core business is to provide a service, so the addition of services after Prestige Stairlifts in a domain name certifies it is the Complainant who is providing the services. People understanding that English language will automatically assume both domain names are one and the same company. The reputation the Complainant has built with its name gives the

Respondent no reasonable justification for having registered the Domain Name in the first place.

6.40 In the Expert's view on the balance of probabilities this ground is also applicablhere. Firstly the Domain Name is similar to the Brand. It does add the descriptive word 'services' but that is not the distinctive part of the Domain Name. Furthermore the Complainant's name or mark is distinctive of it. The Expert has concluded above that on the balance of probabilities the Respondent knew of the Complainant's domain names, business and the Brand before registering the Domain Name. Whilst the Respondent can try to suggest that it had a legitimate reason to register it as it planned to set up a new business for stairlifts and related services it could easily have chosen a different domain name which did not incorporate the Brand but chose not to do so.

7. Decision

Given all of the above, the Expert is satisfied that the Complainant has established on the balance of probabilities that the Respondent's use of the Domain Name has been in a manner which takes unfair advantage of and/or is unfairly detrimental to the Complainant's Rights. The Expert has found that the Complainant on the balance of probabilities has established Rights in a name or mark which is identical or similar to the Domain Name and that the Domain Name is in the hands of the Respondent an Abusive Registration. The Expert therefore directs that the Domain Name be transferred to the Complainant

SignedGGRASSI.....

Dated22/1/18.....



