

DISPUTE RESOLUTION SERVICE***D00019682*****Decision of Independent Expert****Charles & Colvard Ltd.**

and

Stephen Harris**1. The Parties:**

Complainant:

Charles & Colvard Ltd.
170 Southport Drive
Morrisville,
NC 27560
USA

Respondent:

Stephen Harris
HAZ UK Limited
Elton House
5 Powell Street
Birmingham
B1 3DH
UK

2. The Domain Name(s):*charlesandcolvard.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 might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

15 December 2017 Dispute received
19 December 2017 Complaint validated
19 December 2017 Notification of complaint sent to parties
02 January 2018 Response received
02 January 2018 Notification of response sent to parties
05 January 2018 Reply reminder sent
10 January 2018 Reply received
10 January 2018 Notification of reply sent to parties
10 January 2018 Mediator appointed
15 January 2018 Mediation started
14 March 2018 Mediation failed
14 March 2018 Close of mediation documents sent
26 March 2018 Complainant full fee reminder sent
28 March 2018 Expert decision payment received

4. Factual Background

The Nominet records show that the Domain Name was registered on 26 April 2004.

Based on the parties' submissions (see section 5 below), I set out below the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant has distributed its moissanite stones through UK distributors on a substantial scale since at least 2004.
- b. The Complainant has operated a website at www.charlesandcolvard.com since 1999.
- c. The Complainant owns EU trade marks for the CHARLES & COLVARD name.
- d. The Respondent became a distributor of the Complainant's stones in 2004, and since that time has traded in those stones as an authorised distributor of the Complainant and/or more recently just as a purchaser.
- e. The Respondent registered the Domain Name in 2004, and has operated a website under that name continuously since then.
- f. The Complainant first became aware of the Respondent's use of the Domain Name in July 2016.
- g. The Complainant has not given its express permission for the Respondent to register or use the Domain Name.

5. Parties' Contentions

Complaint

The Complainant's contentions are as follows:

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

- (1) The registered Complainant's Trade Marks are evidence that the Complainant has rights in respect of marks which are identical or similar to the Domain Name.
- (2) The Complainant has garnered a considerable reputation in its Charles & Colvard mark globally, including within the United Kingdom. In the last 3 years, the Complainant distributed over \$587,000 worth of goods on a wholesale basis in the

UK. In addition, since Complainant's website became consumer-facing in October 2016 the Complainant has had over 37,000 unique visitors to its website from consumers using UK IP addresses.

- (3) The Complainant has owned and used its domain name charlesandcolvard.com since 1999, over half a decade before the Domain Name was registered.
- (4) For the past 18 years the Complainant has continuously referred to its trading name 'Charles & Colvard' throughout its website and the Complainant has continuously operated under the trading name Charles & Colvard for the entire period.
- (5) The Complainant has also garnered considerable reputation in the Charles & Colvard trade mark in the UK as a result of press coverage of the Complainant, all of which refers to the Complainant as Charles & Colvard.
- (6) The Complainant has significant rights in respect of the Charles & Colvard trade mark, which was registered prior to the Domain Name. The Domain Name is confusingly similar and/or identical to the Complainant's Trade Marks. The Domain Name is identical to the Complainant's Domain Name save that the Domain Name is a ccTLD, whereas the Complainant's Domain Name is a gTLD.

The Domain Name, in the hands of the Respondent, is an abusive registration:

- (1) The Complainant is a North Carolina based, US publicly traded company (NASDAQ; CTHR) founded in 1995. The Complainant manufactures, markets and distributes moissanite and finished jewellery featuring moissanite for sale in the worldwide jewellery market. The Complainant created and is the first in the world to manufacture and sell moissanite. The Complainant has net sales from continuing operations reaching \$18.5 million following the first three quarters of 2017.
- (2) The company distributes its moissanite jewellery through several international distributors including in the UK since at least 2004. As a result of its activities the Complainant has garnered a considerable reputation across Europe, including within the United Kingdom. In order to protect the substantial goodwill in its business the Complainant is owner of numerous registered trade marks throughout the world, including in Europe relating to the Complainant's trading name, 'Charles & Colvard' ("the Complainant's Trade Marks"). As the original creator, the Complainant's trading name is now intrinsically linked with moissanite jewellery in the UK and worldwide.
- (3) The Complainant registered the domain name www.charlesandcolvard.com ("the Complainant's Domain Name") in 1999. Since then the Complainant has operated its website (the 'Website') from that domain in order to promote its goods and services. Throughout the Website the Complainant prominently uses the Complainant's Trade Marks and continuously refers to its trading name, Charles & Colvard.
- (4) The trading name, Charles & Colvard, is also a registered trade mark in Europe in relation to which the Complainant has garnered considerable reputation and goodwill in Europe, including the UK, since at least 1999 (five years prior to the Respondent registering the Domain Name). It is therefore clear that for nearly 18 years, businesses and consumers in the UK have associated the Complainant with its Charles & Colvard trading name. The Complainant's rights in the UK are all prior to the Respondent's registration of the Domain Name.
- (5) The Complainant's Website became consumer-facing in October 2016. Since that time, the Complainant has had over 37,000 unique visitors to its Website from consumers using UK IP addresses. Those Website visits have resulted in over 55,000 sessions and \$8,000 worth of sales of the Complainant's products to visitors from the UK.

- (6) The Respondent has been a wholesaler and distributor of the Claimant's products at least since September 2004 and continues to be a customer and distributor.
- (7) The Domain Name, www.charlesandcolvard.co.uk, is a website registered in 2004 in the name of Stephen Harris, the Managing Director of Haz UK Ltd. The Whois details for the Domain Name lists Mr Harris' address as the same address of Haz UK Ltd at its date of incorporation in 2004 (the same year in which the Domain Name was registered). The Complainant therefore presumes that the Domain Name has been registered by Mr Harris in his capacity as Managing Director of Haz UK Ltd and not in his personal capacity and therefore Haz UK Ltd is the appropriate Respondent.
- (8) As part of their ongoing relationship the Respondent entered into a 12 month, automatically-renewing distribution agreement with the Complainant on 17 May 2010 (the 'Agreement'). Clause 8 of the Agreement deals specifically with obligations and rights of the parties regarding intellectual property and domain names. Further, the first agreement entered between the parties was dated 9 September 2004 explicitly states in Clause 5b that *"all material, including without limitation all artwork and designs, created by Licensee or any other person or entity retained or employed by Licensee bearing, displaying or containing the Trademarks or Copyright Works are works made for hire within the meaning of the United States Copyright Act and shall be property of the Licensor, unencumbered by moral rights"* (emphasis added). The same wording can be found in subsequent agreements between the parties, entered in 2005 and 2006. Therefore it is clear from each and every agreement entered between the Complainant and the Respondent that the Respondent was at all times prohibited from registering any domain name incorporating the Complainant's Trade Marks, or that, if it did, any and all right and title in those domain names automatically vested in the Complainant.
- (9) Upon the Complainant becoming aware of the Domain Name in June 2017, the Complainant wrote to the Respondent on 13 July 2017 explaining that the Domain Name breached the Respondent's contractual obligations and infringed the Complainant's intellectual property rights. The Complainant requested that the Respondent transfer ownership and control of the Domain Name to the Complainant. The Complainant sent another email on 22 July 2017 requesting a response.
- (10) Mr Harris replied by email on 22 July 2017 stating that they had purchased the Domain Name to avoid any 'old Tom, Dick or Harry purchasing the site' and that the Respondent had informed the Complainant of its intention prior to registration of the Domain Name. The Complainant has no record of the Respondent requesting permission or granting permission.
- (11) As a result of the Respondent's failure to provide any evidence of that permission and its failure to transfer the Domain Name the Complainant instructed its solicitors, Bird & Bird LLP, to write to the Respondent on 3 August 2017. This letter further set out how the Domain Name breached the Respondent's contractual obligations and infringed the Complainant's intellectual property rights and requested that the Respondent transfer the Domain Name to the Complainant and cease using any infringing material. Mr Harris responded directly to the Complainant by email on 22 August 2017 stating that it had the permission of Dennis Reed and Bob Thomas of the Complainant to register the Domain Name. In addition, despite requests, the Respondent has failed to provide any evidence whatsoever to substantiate its claims. In any event by entering the agreement dated 17 May 2010 (some 6 years after the Respondent supposedly received the Complainant's permission to register the Domain Name (which is denied)), the Respondent was expressly obliged not to register any domain names incorporating the Complainant's Trade Marks. The Respondent's failure to raise the existing Domain Name at that stage is a damning indication that it did not in fact have any permission to register the Domain Name as it suggests.

- (12) The Respondent has neither sought nor been given any permission by the Complainant, to register or use any domain name incorporating any of the Complainant's marks. Indeed, pursuant to clause 8 of the Agreement (below) the Respondent was expressly prohibited from registering any such domain name.

'8. All intellectual property rights in the Products, Trademarks and Copyright Works shall inure to the benefit of, and be on behalf of C&C. Buyer has no right to register or to apply to register any Trademarks or any confusingly similar mark as a corporate or trade name, domain name, trademark or service mark in any country or territory. It is understood and agreed that C&C, as authorized licensor and owner, shall have standing to enforce its rights in all intellectual property in connection with the Products, Trademarks and Copyright Works. Except as expressly set forth in this Agreement, the sale of the Products hereunder does not convey any express or implied license or other right under any patent, copyright, trademark or other proprietary rights owned or controlled by C&C and all rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by C&C.'

- (13) Even with the knowledge of this clause, the Respondent failed to disclose the Domain Name to the Complainant before and at the time of entering into the Agreement in 2010. This is evidence to the fact that the Respondent did not want the Domain Name to come to the attention of the Complainant and the registration of the Domain Name has been in bad faith.

- (14) The dominant and distinctive element of the Domain Name (i.e. 'charlesandcolvard') is phonetically and conceptually identical to the Charles & Colvard mark and is visually, orally, and conceptually very similar to the other Complainant's Trade Marks. Given this identity/similarity and the fact that the Respondent is using the marks in relation to identical services for those in relation to which the Complainant's Trade Marks have been registered, confusion on the part of consumers is inevitable, including confusion that the Domain Name is in some way operated or authorised by, or otherwise connected with the Complainant; none of which is true.

- (15) Furthermore, having regard to the retailers listed on the 'Retail' page of the Respondent's website (<http://charlesandcolvard.co.uk/retail>), the Respondent's Domain Name, is clearly targeted to UK consumers among others and the Complainant believes that businesses will incorrectly believe that the Respondent's website is associated with the Complainant. As a result, actual confusion between the Complainant and the Domain Name will occur. The Complainant is fearful that it has already suffered damage in this regard. This is an infringement of our client's rights pursuant to section 10(2) of the Trade Marks Act 1994.

- (16) The fact that the Respondent deliberately chose to use 'charlesandcolvard' for its Domain Name for its commercial gain takes unfair advantage of and is detrimental to the considerable reputation in the Complainant's Trade Marks. The abusive registration of the Domain Name by the Respondent is therefore infringing the Complainant's exclusive rights in the Complainant's Trade Marks pursuant to section 10(3) of the Trade Marks Act 1994.

- (17) In addition, by using the Domain Name which is identical to the Complainant's registered 'Charles & Colvard' trade mark (which has garnered considerable reputation and goodwill since the Complainant patented the moissanite production method and sold the products under that mark in 1999), the Respondent is misrepresenting that it is in some way authorised by the Complainant to use the Domain Name. This in itself is an actionable passing off.

- (18) It is clear from the correspondence that the Respondent is aware that its registration of the Domain Name and the original content of the website linked to the Domain Name infringes the intellectual property rights of the Complainant. Therefore at a very minimum the Domain Name has been used by the Respondent in bad faith since that date and continues to be so used.

- (19) Furthermore, given the nature of the online services the Respondent provides and the Agreement entered into with the Complainant, it is inconceivable that the Respondent could not have been aware of the Complainant and the Complainant's Trade Marks at the time of and since the registration of the Domain Name.
- (20) Given the distinctiveness of and reputation in the Complainant's Trade Marks within the jewellery and precious stones industry, including its extensive reputation in the UK, no trader would have chosen to use the Domain Name over the last decade except to create a false impression of association with the Complainant and misleadingly to divert the public from the Complainant's business to its own. Furthermore, from the use of the warranty registration certificate imagery, the 'About Moissanite' section, and the use of a US address in the 'Contact Us' section on the website created by the Respondent and linked to the Domain Name, it is apparent that the Respondent had no intention to use the Domain Name or any site attached to it for the Complainant's benefit, but rather to advance its own business interests to the direct detriment of the Complainant. The Respondent continues to use the Domain Name deliberately in order to benefit from the Complainant's goodwill and that of the Complainant's Trade Marks and/or that it has no legitimate reason for not transferring the Domain Name.
- (21) The Complainant submits that all of the above shows that the Respondent either registered the Domain Name in bad faith or later used (and continues to use) the Domain Name in bad faith with the primary purpose of renting or selling the Domain Name to the Complainant, preventing the Complainant from using it, disrupting the complainant's business and/or to confuse internet users, all of which are types of abusive registrations.

Response

The Respondent's submissions are set out below:

- (1) The Respondent is the UK and European Distributor for the Complainant's Moissanite and has been since 2004.
- (2) For 20 years the Complainant operated as a seller to manufacturers and distributors of the loose stones only, with all the retail selling done by the distributors.
- (3) The Respondent's business was the UK distributor of the Complainant's Moissanite. The Respondent bought a number of domain names and set up the appropriate websites including moissanite.co.uk and Charlesandcolvard.co.uk, using .co.uk as it was solely operating in the UK and was a UK based distributor. When the Respondent set up the websites, the Complainant was fully aware of the Respondent's domain names and had no interest at all with a co.uk name as it was solely the seller of the stones and US based, using local distributors.
- (4) The Complainant issued contracts only on a yearly basis. At first a contract was issued each year but in 2008 no contracts were issued as the Complainant expanded out and enrolled more than one UK distributor. The new distributors failed in growing Moissanite business and in 2010 a new contract was issued. Again at the time the Complainant was fully aware of the Respondent's web sites, including charlesandcolvard.co.uk, and approved them.
- (5) There has been no contract in place between the Complainant and the Respondent for the past 7 years. The 2010 contract expired at the end of 2010.
- (6) Until 2016 Charlesandcolvard.com the US web site was an information site only linking visitors to the distributors. It has since changed to a direct to consumer site.

- (7) The UK site for which the Respondent is the Complainant's UK distributor is an information site only and has no direct selling functions.
- (8) When the US site stopped being an information only site, the Respondent added the option for UK customers to register their Charles and Colvard warranty, under which the Respondent honours all claims in the UK.
- (9) The Respondent has built up a business in the UK as the UK distributor of Charles and Colvard Moissanite. We have purchased in the region of \$4,000,000 of Charles and Colvard Moissanite and still have \$400,000 stock. The Respondent sells through large retailers and direct to the consumer, all of which the Respondent sells with the Charles and Colvard warranty card.
- (10) It is the Respondent's belief that the Complainant wishes to take this .co.uk website and use it to its commercial gain as it has done with .com. .co.uk web sites are associated by consumer with British companies and being British based, which the Respondent is.
- (11) The Respondent's website is purely an information site for UK enquiries, to direct them to UK outlets for Charles and Colvard's Moissanite and to provide them with information in English of what Charles and Colvard's Moissanite is.

Reply

The Complainant's submissions in reply are as follows:

- (1) The Complainant submits that this is a classic case of domain name cybersquatting. The Respondent registered and is maintaining the Domain Name in bad faith. The Respondent acknowledges that it operates its retail business from its website located at moissanite.co.uk which is a retail website, allegedly unlike the Website at the Domain Name which purports to be "for information only". This is untrue and in actual fact the Website directs consumers to the Respondent's retail website (see the "Where to Buy" link on the homepage of the Website). The Respondent has no right or interest to the Domain Name and its use of the Domain Name is an infringement of the Complainant's Trade Marks. The Complainant submits that the registration and use of the Domain Name has been done:
 - a. for the purposes of selling, renting or otherwise transferring the Domain Name to 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;
 - b. as a blocking registration against a name or mark in which the Complainant has Rights; and/or
 - c. for the purpose of unfairly disrupting the business of the Complainant.
- (2) The Respondent has failed to provide any evidence whatsoever to the contrary.
- (3) In particular, the Respondent states: "When setting up the web sites Charles and Colvard was fully aware of our domain names and had no interest at all with a co.uk name as they was solely the seller of the stones and US based using local distributors." In light of this comment the Complainant has conducted additional searches looking for any communication between the Respondent and the Complainant in which the Complainant purportedly authorised the Respondent to register the Domain Name. In particular the Complainant has reviewed:
 - a. all paper files;
 - b. all e-mail systems; and

c. retrieved off-site archives.

Despite these additional searches, the Complainant has not found any correspondence from or to Haz UK Ltd in which the Respondent sought, and/or the Complainant granted permission for, the registration of the Domain Name. The Complainant notes that the Respondent has not provided any such evidence in support of its arguments.

- (4) The Respondent goes on to state: "At first a contract was issued each year but in 2008 no contracts was issued as Charles and Colvard expanded out and enrolled more than one UK distributor. The new distributors failed in growing Moissanite business and in 2010 a new contract was issued. Again at the time Charles and Colvard was fully aware of our web sites including charlesandcolvard.co.uk and approved of our sites. There has been no contract in place with Charles and Colvard for the past 7 years the 2010 contract expired at the end of 2010." This is inaccurate. As is clear from the agreement entered between the parties in 2006, the term of that agreement was 5 years, i.e. it did not expire until 27 September 2010, it is for that reason that no additional agreements were entered into between the parties between 2006 and 2010.
- (5) It is accepted that at that time the Complainant also contracted with other distributors in the UK, it is not correct that they "failed in growing Moissanite business". It should also be clarified that when the Complainant informed the Respondent that it would no longer be the Complainant's exclusive licensee in the UK, the Respondent was demonstrably unhappy with the change in circumstances.
- (6) In addition, the 2010 Agreement expired on 17 May 2011 (12 months after the date of signing). It is accepted that no further long term agreement was entered into between the parties after the 2010 Agreement. As a result, on the Respondent's explanation all rights granted to the Respondent, pursuant to clause 8 of that Agreement, ceased on 17 May 2011 after which date it had no right whatsoever to use any of the Complainant's trade marks in any capacity, such use would amount to infringement by the Respondent of the Complainant's rights.
- (7) Despite no new manufacturing, distribution and license agreement having been put in place by the parties, the Respondent has continued to purchase products from the Complainant pursuant to the terms of Contracts for Sale of Goods. These Contracts for Sale of Goods do not grant the Respondent any licence to use any of the Complainant's trade marks, whether in the Domain Name or otherwise.
- (8) In relation to the Respondent's point that "When the US site stopped being information only site, we added the option for UK customers to register their Charles and Colvard warranty, under which we honour all claims in the UK." Again this is not true. As stated in the Complaint, the Complainant's website became consumer facing in October 2016. An internet archive search of the Website show that on 9 January 2016 (some 9 months before the Complainant's website started selling products) the Respondent was purporting to allow UK consumers to register their Charles & Colvard warranties on the Website.
- (9) In any event, this feature in itself causes serious concern to the Complainant. The Complainant issues Warranties and Certificates of Authenticity for its gemstones; however, when a user clicks on the 'Warranty Registration' link the Website, an error message is received. If a user selects 'Jewellery Registration' from the list of tabs at the top of the Website homepage, they are prompted to enter their Warranty ID Number, this is misleading and damaging to both the Complainant and to users. The Respondent purchases (or historically has purchased) gemstones from the Complainant, it then sets those gemstones into jewellery. Using the Complainant's warranty card image and information in this way will cause UK customers to mistakenly believe that the Complainant is responsible for warranting the jewellery

itself (even though the Respondent or its vendors provided the jewellery and the Complainant only warrants the gemstones therein).

(10) This concern is heightened by the fact that the Website includes the following information, purportedly for the Complainant's business, when a user clicks on the "contact us" link on the homepage of the website:

"Find Us
Address : 2701 Gateway, Pompano Beach, FL 33069
Customer Service : Open 24/7
Phone : (855) 423 - 1212
Email : abcd@gmail.com

(11) This information is entirely false:

- a. The Complainant has never been located at that address (or even in Florida), as is clear from the agreements which the Respondent entered with the Complainant;
- b. The phone number provided is not that of any number associated with the Complainant; and
- c. The email address is clearly false.

(12) Given the Domain Name being used by the Respondent, consumers will be misled into believing that the Website is either run by or authorised by the Complainant. That is not the case and it is clear that such inaccurate information on the Website will cause considerable damage to the Complainant.

(13) Finally, the Respondent claims "The site is purely an information site for UK enquiries to direct them to UK outlets for Charles and Colvard's Moissanite and to provide them with information in English of what Charles and Colvard's Moissanite is".

(14) This is not accepted. Screenshots of the Website taken from the internet archive show that as early as 2005 the Website was used by the Respondent to sell moissanite products. In its current form the Website is designed to direct consumers towards (i) the Respondent's retail website at moissanite.co.uk (see "Where to Buy">"TV Shopping" link) and (ii) retailers to whom the Respondent sells its products (see "Where to Buy">"Online" link). As the Respondent has stated in its Reply, the Respondent is not the Complainant's sole distributor in the UK, but is using the Complainant's name for its sole benefit (and not for the benefit of the Complainant's business). The damage to the Complainant's business is compounded by the fact that the Respondent may also source moissanite products from third party manufacturers wholly unassociated with the Complainant. As a result, consumers could purchase moissanite jewellery from any of the retailers listed on the Website, thinking they are purchasing Charles & Colvard moissanite, when that may not be the case.

(15) The Respondent is therefore clearly purposefully using the Domain Name for its sole advantage, to deprive the Complainant of its benefit, and to the direct detriment of the Complainant. The Complainant requests that the Domain Name be transferred to the Complainant without delay.

Complainant's Further Statement

The Complainant's submissions in its further statement, which I have permitted, are as follows:

(1) In the Complainant's Response, the Complainant submitted as follows:

"The Complainant has not found any correspondence from or to Haz UK Ltd in which the Respondent sought, and/or the Complainant granted permission for, the registration of the Domain Name. The Complainant notes that the Respondent has not provided any such evidence in support of its arguments."

- (2) Since that statement, as a result of work carried out by the Complainant wholly unrelated to the Complaint, the Complainant has had reason to review the email inbox of a former employee of the Complainant's business (Ms Tanya Sanders). During that review, the Complainant found an email exchange with the Respondent relating to the Respondent's use of the Disputed Domain and requesting that such use cease immediately. All emails between the Complainant and the Respondent that the Complainant has reasonably been able to locate relating to the Disputed Domain are annexed.
- (3) This email exchange demonstrates that the former employee became aware of the Disputed Domain on or around 13 July 2016 as a result of the Complainant receiving email warning notifications/DMARC reports that emails were being sent from a domain name which was deceptively modified to reflect the Complainant's email address.
- (4) These DMARC reports came from a variety of sources including Google, Microsoft, and Yahoo and showed that numerous email recipients were receiving emails that were labelled as coming from noreply@charlesandcolvard.com, with a subject line reading "Charles & Colvard Account". Furthermore it was determined that these emails were sent from an email server controlled by the Respondent and the content of the emails deliberately linked recipients back to the infringing website at the Disputed Domain (the "Infringing Website"), rather than to the Complainant's website.
- (5) Upon learning of these persistent emails, the Complainant's former employee appears to have reviewed the Infringing Website on 18 July 2016 and requested a call with the Respondent for 20 July 2016 to discuss the registration of the Disputed Domain.
- (6) It is evident from the email exchange between the Complainant's former employee and the Respondent that the Respondent evaded the Complainant's requests for a call to discuss the issue. As a result, the Complainant wrote to the Respondent on 25 July 2016 requesting the following immediate action:
 - (1) *"This website MUST be taken down. This site is causing confusion in the market as it is impersonating Charles and Colvard when this site is not owned by us.*
 - (2) *All registrations MUST be directed to our warranty registration page. NO exceptions. There is nothing wrong with UK registration on our site of which I have tested personally.*
 - (3) *We need all registration data you have received since the start of this site to be provided to us ASAP."*

Despite these requests the Respondent:

- (i) refused to provide any details of warranties registered via the Infringing Website (purportedly on the basis that to do so would be a violation of data protection obligations); and
 - (ii) simply proposed to amend the Infringing Website so as to clarify that the Infringing Website was not associated with the Complainant.
- (7) At the Respondent's request the call scheduled for 20 July 2016 was rearranged no less than 5 times and eventually took place on 26 July 2016. On that call the Complainant rejected the Respondent's position and insisted the Respondent cease from sending any further emails which were deceptively designed to appear to originate from a charlesandcolvard.com domain; change the content of any web portals (i.e. the Disputed Domain and the Infringing Website) operated by the Respondent to clearly indicate that the portal was not owned or operated by the Complainant (i.e. Charles and Colvard Ltd); and direct future end consumers to

register their product warranty with the official Charles and Colvard warranty registration portal on the Complainant's own website.

- (8) Ms Sanders ceased employment with the Complainant on 7 October 2016. To the best of the Complainant's knowledge based upon further investigations carried out internally, there was no further correspondence between the Respondent and the Complainant in relation to the Disputed Domain after the teleconference held on Tuesday, 26 July 2016.
- (9) The Complainant confirms that after that call all DMARC reports suggesting emails were being sent from a domain name which was deceptively modified to reflect the Complainant's email address (i.e. from an email connected to the Disputed Domain) ceased. As a result, the Complainant understood that the Respondent had complied with the requests made on the call on 26 July 2016.
- (10) It was not until summer 2017 that the Complainant became aware that the Disputed Domain and Infringing Website were still being used by the Respondent. As a result of which the Complainant wrote to the Respondent requesting that the Disputed Domain be transferred to it (see the Complaint and annexes thereto).
- (11) It therefore remains the case that the Complainant never agreed and/or consented to the Respondent either registering or using the Disputed Domain, whether in relation to the Infringing Website (in any (amended) form) or otherwise. The Complainant submits that this exchange supports the Complainant's submissions that the Disputed Domain has at all times been registered and used in bad faith and that the Respondent has at no time been authorised in any way to register and/or use the Disputed Domain.
- (12) It is also the case that the continued use of the Disputed Domain by the Respondent is use in bad faith given that the Respondent has been expressly informed it is in breach of any and all trade mark licences which may be in existence between the Complainant and the Respondent. Furthermore, in light of the fact that the Complainant has offered to make the Respondent whole for any expenditures it may have had in relation to the Disputed Domain since its registration, it is clear that the only reasons the Respondent may have for refusing to transfer the Disputed Domain to the Complainant are that the Disputed Domain is being used in bad faith:
 - a. for the purposes of selling, renting or otherwise transferring the Disputed Domain 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 Disputed Domain;
 - b. as a blocking registration against a name or mark in which the Complainant has rights; and/or
 - c. for the purpose of unfairly disrupting the business of the Complainant, each of which amounts to an Abusive Registration pursuant to clause 5.1 of the Dispute Resolution Service Policy.

Respondent's Further Statement

The Respondent's submissions in response to the Complainant's further statement are set out below:

- (1) The calls referred to by the Complainant were agreed at a set time and it did not make the call until one hour later, at which time the Respondent was driving back from a customer and had no hands-free telephone.
- (2) As already mentioned the Respondent's website is purely an information site from the UK distributor of Charles and Colvard's Moissanite of which the Respondent has purchased many millions of dollars (\$) of stock and which it sells into a number of distributors.

- (3) The guarantee for the products is serviced from the UK and the Respondent's website gives customers the information to register their Charles and Colvard ring with the company that made the ring and is a UK contact address, hence the .co.uk site.
- (4) The conversation with the Complainant was not about the website. The Complainant has been happy and Bob Thomas the CEO from 2004, when the Respondent set up the business of being the UK distributor of Charles and Colvard's Moissanite, was fully aware of the sites registered by the Respondent, and the Respondent was given approval to use the names and trade marks. There were no guidelines to a supplier having the brand (Charles and Colvard) as its territorial location domain.
- (5) The Respondent set up the appropriate websites to relate to the UK business:
 - a. Moissanite.co.uk – direct selling site
 - b. Charlesandcolvard.co.uk – purely information and links to the retailers
 - c. Gioiellimoiss.co.uk – a watch brand featuring Moissanite
- (6) This followed the guidelines issued by the Complainant, who provided us with the marketing to use on the websites and logos. At this time the Complainant was purely a supplier of loose stones and has only recently, under the now sixth management team, started selling direct to the end consumer and is supplying finished jewellery, i.e. rings set with stones.
- (7) For over 15 years the Complainant used Charlesandcolvard.com as a corporate website to give shareholder information etc. Over the last couple of years Charlesandcolvard.com has been converted to an end user shopping cart.
- (8) The discussion with the Complainant ended that the website content was acceptable as long as the registration was for UK made jewellery featuring Charles and Colvard Moissanite. This is the purpose of the website, as well as directing customers where to buy Charles and Colvard Moissanite using stones purchased from the Complainant.
- (9) The website is not set up to send emails and has never sent any emails and this was never discussed further as there were no emails and can be no emails from this site. When a customer registers an item of jewellery they are directed to a screen which states "Thank for registering your jewellery with Moissanite UK". It should be noted that it is in English not American (Jewellery).
- (10) For 14 years the Respondent has had this website and the others without an issue with the Complainant. It is only later that the Complainant has set out to obtain the website, which our customers have believed and trusted is the UK supplier of Charles and Colvard Moissanite and has manufactured and hallmarked their jewellery by a UK Assay Office. If the Complainant intends to launch a .co.uk shopping site in the UK supplying finished jewellery direct from America, this raises the question of the legal requirements of supplying jewellery in the UK. This needs to be looked into further as with a .co.uk site the customer is presuming the jewellery will be hallmarked to UK requirements.
- (11) The Respondent has held the Domain Name for 14 years and with the approval of the Complainant's management until now.
- (12) The Respondent holds stock of over \$500,000 of Charles and Colvard- created Moissanite, either loose stones or finished jewellery. The Respondent's customers want to register their jewellery with a UK base for security and service.
- (13) The website is clear to customers that it is a "UK distributor", hence it being a .co.uk site.

- (14) The website uses information which was all approved by the Complainant.
- (15) As the Respondent supplies to a number of customers in the UK, it needs a stand-alone information site that is not biased to one customer and offers no favours to any of the customers.
- (16) There is no profit gain from the website. It is purely an information site for UK customers for the many millions of purchases made of Charles and Colvard-created Moissanite. The information is the information provided by the Complainant and approved at the time of going live.
- (17) Since 2010 the Complainant has not issued contracts for distributors. The Respondent's contract expired in 2011 and the website in our control was approved by the Complainant's Mr Tom Pautz, who issued the last contract.

Complainant's Reply to Respondent's Further Statement

The Complainant's submissions in reply to the Respondent's further statement are as follows:

- (1) The Respondent states that the Complainant's representative was late in making the telephone meeting with the Respondent's representative. Prior to the call in question, the telephone meeting was rearranged at least four times, due to the Respondent's representative repeatedly failing to dial in- see the email chain annexed to the Complainant's further statement.
- (2) The Complainant refers to its Reply which, in reply to the Respondent's assertion that the Disputed Domain is being used solely as an '*information only*' site, sets out how the Disputed Domain is instead being used by the Respondent to sell its products. The Respondent again states in its Further Statement that the Disputed Domain is '*purely an information site*', and later that it is a neutral '*stand-alone information site*', from which it does not seek to gain profit. As set out in the Complainant's Reply, this claim is false.
- (3) The Respondent asserts that the Disputed Domain '*gives the customers the information to register their Charles and Colvard ring with the company that made the ring*'. Later in the Further Response, the Respondent implies that its use of the Disputed Domain is not misleading, since, upon registering their jewellery on the Disputed Domain, customers are directed to a page which reads "*Thank you for registering your jewellery with Moissanite UK*".

However, the image on the home page of the Disputed Domain is of the Complainant's warranty card and, as the Respondent is aware, all warranty matters relating to the Complainant's products should be dealt with directly through the Complainant. The Respondent, through the Disputed Domain, is giving the misleading and damaging impression that the Respondent has authority to deal with such matters, which may have a negative impact on the service customers might receive when they attempt to claim under such warranties. At no point is any of the data provided by customers to the Disputed Domain upon registration of a warranty for the Respondent's jewellery given to the Complainant, in order to facilitate the registering of stones by the Complainant for warranty purposes.

- (4) The Respondent claims that the Complainant has been '*happy*' with the Disputed Domain and the related conduct of the Respondent. As set out in the Complainant's further statement and as evidenced by the 25 July 2016 email, this is manifestly untrue.
- (5) The Respondent states that they were not given any brand guidelines. The image of Section 7(b) of the 'Original Website Manufacturing Agreement', submitted by the

Respondent, shows that the Complainant, in this agreement (the date of which is unclear), granted a limited, non-exclusive license to respondent to use complainant's trademarks and copyrighted works "*only in conformity with the terms of this agreement and the guidelines concerning the use of...trademarks and copyright works as described in the Brand Identity Guidelines, as may be amended from time to time*" and that the Respondent "*shall have no right to, nor shall it attempt to challenge, assign, sublicense, transfer, pledge, lease, rent, or share the rights granted under this License Agreement...without the prior written consent of*" the Complainant.

- (6) Similar restrictions are contained in the Agreement between the parties dated 17 May 2010:

"All intellectual property rights in the...Trademarks and Copyright Works shall inure to the benefit of, and be on behalf of C&C. Buyer has no right to register or to apply to register any Trademarks or any confusingly similar mark as a corporate or trade name, domain name, trademark or service mark in any country or territory."

It is clear from these terms that the Respondent was, or should have been, aware that it was not free to use the Complainant's brand as it wished. It is also clear that through its actions in relation to the Disputed Domain, the Respondent has acted in breach of both of the abovementioned agreements.

- (7) The Respondent asserts that its use of the Complainant's brand is in line with marketing materials previously provided for its use, and relies, as an explanation for its breaches of the agreements, on the assertion that the leadership and business strategy of the Complainant has changed over time. The Respondent further seeks to rely, without relevance, upon the use by the Complainant of its own "colvardandcolvard.com" domain.
- (8) The Complainant is the owner of the relevant intellectual property, and has the right, under the various agreements, to vary its requirements as to use by the Respondent of such intellectual property from time to time. The Complainant has provided up-to-date marketing materials for the Respondent to use on its non-infringing domains, and has, in line with its evolving business strategy, requested that the Respondent cease use of the Disputed Domain. The Complainant is, in doing so, acting within its rights, both as owner of the relevant trade marks and under the abovementioned agreements. The changing management of the Complainant, and the uses it makes of its registered domains, now or at any time, are of no relevance to these rights or the Disputed Domain.
- (9) The Respondent asserts that:

'The discussion with Tanya at Charles and Colvard ended that the website content was ok as long as the registration was for the UK made jewellery featuring Charles and Colvard Moissanite.'

This directly contradicts the Respondent's earlier assertion that the '*conversation with Tanya was not about the website*'. As is clear from the 25 July 2016 Email, Tanya Stevens, for the Complainant, requested that the website be taken down, and was not of the opinion that the content was "OK".

- (10) The Respondent refers to the expiry of the 2010 Agreement in 2011 in relation to an assertion that its use of the Disputed Domain was previously approved by the Complainant (which the Complainant disputes). Those permissions which the Respondent had to use the Complainant's trade marks and other intellectual property were terminated with the expiry of the 2010 Agreement, per Section 7, which states that '*[u]pon any termination or expiration of this Agreement, Buyer shall...discontinue all use of the Trademarks and Copyright Works and deliver to C&C all materials in its possession bearing the Trademarks and Copyright Works*'.

Further, Section 8 - Intellectual Property of the 2010 Agreement states that "*all intellectual property rights in the Products, Trademarks and Copyright Works shall*

inure to the benefit of, and be on behalf of C&C. Buyer has no right to register or to apply to register any Trademarks or confusingly similar mark as a corporate or trade name, domain name, trademark or service mark in any country or territory".

Both Section 7 and Section 8 of the 2010 Agreement are stated by Section 7 to survive termination of that agreement. Therefore, in either case, the Respondent has no contractual or other right to use the Complainant's trade marks or any confusingly similar marks to register any domain, including the Disputed Domain.

As set out on page two of the Complainant's Reply, the Contracts for Sale of Goods (an example of which is annexed to the Complainant's Reply) under which the Respondent has continued to purchase products from the Complainant, grant no rights to the Respondent to use any of the Complainant's trade marks.

- (11) The Respondent states that the Disputed Domain '*has never sent emails*'. The e-mail sent to the Respondent by Tanya Sanders on 20 July 2016 (annexed to the Complainant's further statement), which includes detailed information regarding e-mails originating from the site but intentionally sent to appear to originate from Charles & Colvard ("donotreply@charlesandcolvard.com"), shows that this statement is false. As illustrated by the email chain leading up to this email, the Complainant was in fact alerted to the existence of the Disputed Domain by these misleading emails. This is a further rebuttal of the Respondent's assertion that '*there were no emails and can be no emails from this site*'.
- (12) The Respondent commences its summary by asserting that the Complainant has not raised the issue of the Disputed Domain '*until now*'. Per the 25 July 2016 email, this claim is patently false.
- (13) The Respondent again asserts that the contents of the Disputed Domain have been approved by the Complainant. The Respondent has offered no evidence for this assertion. The Complainant, as is clear from the 25 July 2016 email, explicitly disapproved of the misleading and confusing use of the Disputed Domain at that time, continues to object to the Respondent's use of the Disputed Domain, and has the right to do so under the agreements made between the Complainant and Respondent, and by virtue of the Complainant's registered EU trade marks.

6. Discussions and Findings

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove 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 (as defined in paragraph 1 of the Policy).

Complainant's Rights

In light of the factual findings set out in section 4 above, it is clear that the Complainant has Rights in the names Charles & Colvard and Charles and Colvard.

Disregarding the generic .co.uk suffix, the Domain Name is identical in the case of Charles and Colvard, and effectively identical in the case of Charles & Colvard, to the names in which the Complainant has Rights.

I therefore find that paragraph 2.1.1 of the Policy is satisfied.

Abusive Registration

Paragraph 1 of the Policy defines an "Abusive Registration" 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 or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The key relevant factor under paragraph 5 on which the Complainant relies is as follows:

"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"

This is a case where there are many factual points in dispute between the parties. I have set out in section 4 above the most relevant factual findings which I have made in reaching a decision. Insofar as I have not made findings on other factual matters, and/or I do not refer to them below, this is because ultimately I do not consider them materially relevant to the decision.

A central factor in this case is the content of the Respondent's website. In its earlier form, the home page of the website was prominently headed "CHARLES & COLVARD" with "Created Moissanite" under that. All other relevant references on the home page were to Charles & Colvard, and on the home page there was no reference to the Respondent or anything else to indicate that the website was operated by the Respondent. In addition, at the bottom of the home page there was an image of a Charles & Colvard warranty card with a reference to the Complainant's website at charlesandcolvard.com and the US telephone numbers of Charles & Colvard. Moreover, at the "Contact Us" link, the contact details were a US address and telephone number, although neither of those belonging to the Complainant.

More recently (and currently) the home page of the Respondent's website has "Moissanite UK Distributor of" above "CHARLES & COLVARD" at the top. The image of the warranty card is unchanged. The contact details on the "Contact Us" page now refer to "Moissanite UK" with the Respondent's address in Birmingham. Because moissanite is the gem stone produced and supplied by the Complainant, the additional wording at the top of the home page does not, in my view, serve to make clear that the website is operated by the Respondent.

The overriding impression created by the home page of the Respondent's website, both before and after the changes, is that it is a website of the Complainant. This impression reinforces the representation made by the Domain Name itself. The Domain Name consists solely of "Charles and Colvard" (disregarding the generic .co.uk suffix), with no additional differentiating element(s). When a domain name is identical to the name or mark of a complainant, without any adornment, barring exceptional circumstances this is almost inevitably going to lead to people being confused into believing that the domain name is owned or authorised by the complainant. Since the Respondent is using a domain name which is identical to the Complainant's name, for there to be any possibility of confusion not being caused, the home page of the website would need to make it immediately clear and obvious that it is in fact operated by the Respondent. The content of the Respondent's home page does not come close to meeting that requirement.

If there was no commercial relationship between the Complainant and the Respondent, these conclusions would lead to an immediate outcome in favour of the Complainant. In this case, however, there has been a commercial relationship between the parties for many years, including at the time when the Domain Name was registered. It needs to be considered whether or not this commercial relationship has a bearing on the case.

For several years the Respondent was an authorised distributor of the Complainant. It is not clear whether the Respondent is still an authorised distributor of the Complainant or simply an ongoing purchaser of the Complainant's stones. For the purposes of this decision, I do not consider that I need to make a finding on this point.

The Complainant refers to the terms of its distribution agreements with the Respondent at different times. Under the terms of the agreements before 2010, including in 2004 when the Respondent registered the Domain Name, there is no express restriction referring directly to domain names. The Complainant refers to a clause in those agreements which refers to "all material, including without limitation all artwork and designs". However, it is not clear that the wording of that clause would capture domain names. I do not make a finding on that either way. Nevertheless, there is nothing in those agreements which goes the other way and expressly grants the right to the Respondent to register and use a domain name and website using the Charles and Colvard name.

At clause 8 of the agreement between the parties dated 17 May 2010, there is an express provision stating that the "Buyer" (here the Respondent) has no right to register any of the Complainant's trade marks (including Charles & Colvard) or any confusingly similar name as a domain name. This clause clearly covers the Domain Name. Accordingly, if this clause had been part of the agreed terms of business between the parties at the time when the Respondent registered the Domain Name, this would be a very strong factor in the Complainant's favour.

In fact, however, this agreement was not entered into until 6 years after the Respondent became a distributor of the Complainant and registered the Domain Name. The question is therefore how far this later contractual provision is relevant to a domain name which the Respondent had already registered several years earlier and had been using since that time, in particular to the important issue of whether or not the Respondent's continuing use of the Domain Name after 2010 has been in bad faith.

For the purposes of making the decision in this case, the conclusion I have reached of the contractual terms between the parties at different times is that under those terms the Complainant definitely did not positively grant the Respondent the right or permission to register and use the Domain Name. On the other hand, however, I do not make any finding in relation to whether the contractual terms were sufficiently clear and, in the case of the 2010 agreement, sufficiently effective and relevant to lead to the conclusion that the Respondent registered and continued using the Domain Name in bad faith and/or in breach of contract.

In other words, for the reasons explained, my view is that the contractual terms between the parties are not a determining factor in either direction in this case.

The next important issue to consider is whether or not the Complainant, outside the contractual terms, otherwise gave its permission or approval for the Respondent to register and use the Domain Name. The Respondent submits that it was given approval by the Complainant. The Complainant contests this and refers in its Complaint to the lack of any supporting evidence from the Respondent. The Respondent has had the opportunity in its Response, and also in its Further Statement, to answer this by providing supporting evidence but has failed to do so. If the Respondent wishes to rely on permission or authorisation having been given by the Complainant, then notwithstanding paragraph 2.2 of the Policy, the evidential burden on this issue is on the Respondent to provide material in support. Since the Respondent has not done so, I am not able to make a finding that such permission or authorisation was given by the Complainant.

A further potentially relevant factor in this case is the fact that the Respondent registered the Domain Name 14 years ago and has been using it since that time. Should the Complainant's failure to raise the issue with the Respondent until 2016 lead to the inference that the Complainant implicitly authorised the Respondent's usage of the Domain Name, or to a conclusion that its delay should prevent it from succeeding in taking action now?

The issue of delay was considered by the Appeal Panel in Jockey Club Racecourses Limited v Moneta Communications Limited (DRS 17490). In its decision the Appeal Panel stated as follows:

"the relationship between these doctrines and the test for Abusive Registration under the DRS has been explored in a number of DRS decisions, most recently by the Appeal Panel in Lucasfilm Ltd., LLC –v- Abcissa.com Limited (DRS 15788), the relevant passages of which are excerpted below with emphasis added:

"As a starting point in relation to this issue the Panel notes that the Policy itself says nothing about delay, nor does it contain any provisions requiring a Complaint to be brought within a specific time limit after the date of registration of a domain name. The Expert's Overview also contains no guidance on this issue. The Panel also notes that as a matter of English law delay per se would not prevent an action to restrain ongoing acts of trade mark infringement.

*... The circumstances in which delay and other related considerations may operate as a defence to litigation are considered further below. **Overall however the Panel considers that, where the use complained of is ongoing, then delay alone should not automatically preclude a complaint being brought.***

*It is nevertheless the case that the list of factors which may lead to a finding that a domain name is not an Abusive Registration, as set out in paragraph 4 of the Policy, is said to be non-exhaustive. **The Panel concludes that in principle, depending upon the relevant facts, this means that it is open to the Panel to reach a finding that whilst delay does not automatically bar an action, delay in a specific case might be such as to mean that an otherwise Abusive Registration is acceptable. Whether in the particular circumstances of a given case that is the position would depend upon individual facts.***

In fact the Panel has been unable to find a DRS decision where delay or acquiescence alone prevented a finding of Abusive Registration."

In the circumstances and on the facts of this case, I do not consider that the period of delay is a significant factor.

The Complainant's position is that it did not become aware of the Domain Name until July 2016, and that soon after that it first raised the issue with the Respondent. The Respondent has not submitted any evidence to the contrary, only its unsupported assertions that the Complainant has known about the Domain Name from the outset and given its approval for the Respondent's use of it. In light of this, and on the balance of probabilities, I find that the Complainant did not become aware of the Respondent's usage of the Domain Name until July 2016. This conclusion reinforces my view that delay by the Complainant is not a significant factor in this case.

The length of time for which the Respondent has been using the Domain Name is also to be considered when it comes to whether that usage has confused, or is likely to confuse, people into believing that the Domain Name belongs to, or is authorised or connected with, the Complainant. The Complainant has not submitted any evidence of any such confusion having actually occurred. Does this mean that there has not been any such confusion and that there is not likely to be in the future?

It does not follow from the Complainant not having encountered any instances of actual confusion that there has not been confusion. It can often be that people are confused but do not realise their misapprehension or, even if they do, do not go to the trouble of communicating this. In this case, it could easily be the case from the content of the

Respondent's website that people believed that the website belonged to "Charles & Colvard" without knowing the identity of the company- i.e. the Complainant- which owns the rights in that name and which did not own or authorise the website. In such situations, those people would be confused but not ever become aware of their confusion.

Reverting to my earlier findings, it is clear to me that the combination of the Domain Name (being identical to the Complainant's name and without any additions) and the content of the website will have confused people, and is likely to confuse people, into believing that the Domain Name belongs to, or is authorised or connected with, the Complainant.

The final issue to be decided is whether such confusion means that the Respondent's registration and use of the Domain Name has taken unfair advantage of, or has been unfairly detrimental to, the Complainant's Rights.

When a domain name has been used in such a way as to effectively impersonate the complainant, as is the case here, with confusion or the likelihood of confusion being caused as a consequence, it will almost inevitably follow that such use has taken unfair advantage of the complainant's rights or has been unfairly detrimental to them. I make that finding in this case. The Respondent will have gained an unfair advantage as a result of its website being perceived by consumers as belonging to, or connected with the Complainant when this is not the case. Since the Complainant is the manufacturer and source of the moissanite stones, the Respondent will inevitably have gained from the high level of extra authenticity which that untrue perception will have created. As compared with other businesses trading in the stones, this will have given the Respondent an unfair advantage.

The registration and use of the Domain Name will also have been unfairly detrimental to the Complainant's Rights because the Respondent's website is outside the Complainant's control. Since the Respondent's website will have been perceived by consumers as belonging to, or connected with the Complainant, it follows that everything related to that website will reflect on the Complainant. The combination of this reflection with the Complainant's lack of control is itself inherently detrimental to the Complainant's rights. It is not necessary for the Complainant to point to specific actual content of the Respondent's website being damaging to the Complainant. Nevertheless, where there are such examples, these will serve to reinforce the conclusion of unfair detriment. In my opinion, there are examples in this case. One is the false "Contact Us" details which were set out in the earlier version of the Respondent's website. Another is the use of the Complainant's own warranty card and the lack of clarity which this will have caused with customers.

7. Decision

Having found that the Complainant has Rights in respect of a name which is identical to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *charlesandcolvard.co.uk* be transferred to the Complainant.

Signed

Dated: 5 July 2018

Jason Rawkins