

Dispute Resolution Service

DRS 20521

Decision of an Independent Expert

DOODLEHOUSES LTD T/A CHICKENGUARD

and

ENTRYA TECHNOLOGIES BVBA (SECULUX)

1. Parties

Complainant: DOODLEHOUSES LTD T/A CHICKENGUARD
Unit 2, Station Yard
Fulbourn
Cambridgeshire
CB21 5ET
United Kingdom

Respondent: ENTRYA TECHNOLOGIES BVBA (SECULUX)
MarMeerkensstraat 69
Lanklaar-Dilsen
LIMBERG
Belgium

2. Domain Name

chickenguard.co.uk (the "Domain Name")

3. Procedural Background

On 16th August 2018 the Complaint was lodged with Nominet UK Limited (“Nominet”) and it was validated on 20th August 2018. On 20th August 2018 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising it to log into Nominet’s Online Services to view the details of the Complaint, and giving it 15 business days within which to lodge a Response on or before 11th September 2018. On 7th September 2018 Nominet sent the Respondent a Response reminder. On 11th September 2018 the Respondent sent a Response. On 11th September 2018 Nominet advised the Complainant that a Response had been received and advised it to log into Nominet’s Online Services to view it. Nominet invited the Complainant to make a Reply on or before 18th September 2018. Mediation documents were generated for the Complaint, and mediation commenced on 27th September 2018. Mediation was unsuccessful and concluded on 8th October 2018. On 10th October 2018, the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 15th October 2018 Mr. Niall Lawless (“the Expert”) was appointed to act as Expert in this dispute. He is required to give his Decision by 5th November 2018. The Expert has confirmed that he knows of no reason why he could not properly accept the appointment, and knows of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence.

4. Outstanding Formal or Procedural Issues

There are no outstanding formal or procedural issues.

5. Factual background

The Complainant, Doodlehouses Ltd T/A ChickenGuard, wholly owned by ChickenGuard Ltd manufactures and sells automatic chicken coop door openers. It exports its products to over 100 direct trade partners in 22 countries thereby supplying more than 1,000 further resellers. ChickenGuard has sold over 77,000 chicken coop units into 42 countries around the world.

The Respondent, Entrya Technologies BVBA is a Belgian company that produces and distributes plug & play home automation systems. It has two companies active in Europe within the field of automation, these are Entrya Technologies BVBA and Seculux NV. The Respondent registered the Domain Name on 27th August 2015.

6. The Parties' contentions

The Complainant

The Complainant seeks transfer of the Domain Name. The Complainant says that the Domain Name is an abusive registration under Nominet's DRS Policy because:-

- The Respondent is not using the Domain Name and its purpose in holding the Domain Name is to hinder the Complainant using it to develop its business, especially in the UK and Belgian markets.
- The Respondent is potentially unfairly disrupting the Complainant's business as it tries to evolve an already successful brand.
- If the Respondent were to use the Domain Name that would cause unnecessary confusion for the Complainant's large customer base, especially in the UK and Belgian markets.
- If the Respondent were to use the Domain Name that could lead to the misleading selling of counterfeit/non-authentic goods under the Complainant's brand name.
- As a global manufacturer with headquarters based in the UK the Complainant has an unassailable right to the Domain Name.

The Respondent

The Respondent says that the Domain Name controlled by it is not an Abusive Registration under Nominet's DRS Policy because:-

- It first registered the Domain Name on 27th August 2015, and it was only later on 27th January 2017 that the Complainant filed a figurative/graphic registration demand at the European Union intellectual property office. The Respondent says that because of this chronology the Complainant is using the Respondent's name that was already registered by it in 2015.

7. Discussions and Findings

7.1 General

Nominet's DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- i. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

7.2 Complainant's Rights

The Complainant has provided evidence that it manufactures and sells automatic chicken coop door openers worldwide using the "ChickenGuard" brand. The Complainant says that ChickenGuard Ltd has owned the registered trademark for the "ChickenGuard" name since 19th July 2013, with the "ChickenGuard" logo being added on 27th July 2016.

The Complainant registered 3 "ChickenGuard" marks with the Trade Marks Registry under Number UK00003176892 with the effective date of 27th July 2016. The Complainant's EUIPO Certificate of Registration Number 016293078 for the "ChickenGuard" mark was registered on 20th June 2017.

The Complainant's proprietor Benedict Braithwaite owns the following domains <chickenguard.com>, <chickenguard.fr>, <chickenguard.be>, <chickenguardtrade.com>, <chickenguard.es>, <chickenguard.de>, and <chickenguard.nl>. The Complainant has the agreed rights to the following with its trade partners for <chickenguard.dk>, <chickenguard.com.au>, <chickenguard.ch>, and <chickenguard.cz>.

Because of this, based on the evaluation of all evidence presented, the Expert decides that, the Complainant has Rights in respect of the Domain Name.

7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy. Under paragraph 5 "Evidence of Abusive Registration" guidance is given as to what factors may be evidence that the Domain Name is an Abusive Registration.

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

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

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

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

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

5.1.2 Circumstances indicating that the Respondent is using or 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.”

Unfairly disrupting the business of the Complainant

The Complainant says that the Domain Name was registered for it in January 2014. The Complainant says that it used to control the Domain Name via its web developer Ditio Syed Haq. However, when Ditio Syed Haq's company went into liquidation, unbeknown to the Complainant, the Domain Name became available once more to the general public, and it was subsequently registered by the Respondent in August 2015.

The Complainant says that the Domain Name is an abusive registration under Nominet's DRS Policy because the Respondent is potentially unfairly disrupting the Complainant's business as it tries to evolve an already successful brand. The Complainant says that the Respondent is not using the Domain Name, and that its purpose in holding the Domain Name is to hinder the Complainant using it to develop its business, especially in the UK and Belgian markets.

The Complainant says that Belgium is its most successful market with a per person market penetration of 5.8%. The Complainant says that it has a major distributor, pet store chain and garden centre chain selling its products in Belgium with over 15,000 product sales to date. The Complainant says that its brand name is widely recognised in Belgium and it believes the Respondent would have been aware of this and registered the Domain Name because of the popularity of the "ChickenGuard" brand. The Complainant says that the Respondent has not demonstrated any use of the "ChickenGuard" brand that would entitle the Respondent to control the Domain Name.

The Expert accepts the Complainant's contentions that the "ChickenGuard" brand has been in existence since February 2011, when the first ChickenGuard was produced by Benedict Braithwaite and sold on eBay. The Expert also accepts the Complainant's contentions that ChickenGuard Ltd has owned the registered trademark for the "ChickenGuard" name since 19th July 2013.

Therefore the Respondent is incorrect when it says that because it first registered the Domain Name on 27th August 2015, and that it was only later on 27th January 2017 that the Complainant filed a figurative/graphic registration demand at the European Union intellectual property office, that the Complainant is using the Respondent's name.

Under the Policy paragraph 5, one factor that may be evidence that the Domain Name is an Abusive Registration is using the Domain Name *"as a blocking registration against a name or mark in which the Complainant has Rights" or "for the purpose of unfairly disrupting the business of the Complainant"*.

In its 11th September 2018 Response the Respondent confirms that since 2013 it has been active in the marketplace for automatic chicken coop door openers. Given the prominence of the "ChickenGuard" brand it is likely that the Respondent was aware of the Complainant and the scope of its commercial activities.

On the date of this Expert Decision the Domain Name is resolving to a webpage hosted by Easyhost BVBA, Skaldenstraat 121, 9042 Gent, displaying the message *"The domain name has been activated"*. However the Respondent is not currently using the Domain Name for any commercial activity, nor has the Respondent described how it would wish to use the Domain Name in the future for any valid business purpose.

In the absence of the Respondent offering any valid justification for the Respondent controlling the Domain Name, the Expert concludes that the Respondent's purpose in holding the Domain Name is as a *"blocking registration"* to hinder the Complainant using it to develop its business, and to *"unfairly disrupt the business of the Complainant"* especially in the UK and Belgian markets.

Accordingly, the Expert concludes that the Respondent's use of the Domain Name is abusive under paragraph 5.1.1 of the Policy.

Confusion

The Complainant says that if the Respondent were to use the Domain Name that would cause unnecessary confusion for the Complainant's large customer base, especially in the UK and Belgium markets.

Under the Policy paragraph 5, another factor that may be evidence that the Domain Name is an Abusive Registration is *"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 ..."*.

Confusion would arise where the Internet user incorrectly assumes that the website the Domain Names resolves to, and the Complainant's other official websites, are either both authorised by or belong to the Complainant.

Given the Complainant's extensive use of domain names in many other countries using the "ChickenGuard" brand, the Expert therefore considers that it is likely that an internet user arriving at the website linked to the Domain Name would assume that it relates to goods or services provided by the Complainant, and be confused into believing that it is a domain and site owned and provided by the Complainant.

Accordingly, the Expert concludes that the Respondent's use of the Domain Name is abusive under paragraph 5.1.2 of the Policy.

7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

Niall Lawless, Nominet Expert

30th October 2018