

DISPUTE RESOLUTION SERVICE**D00020775****Decision of Independent Expert**

Afterpay Pty Ltd

and

Klarna Bank AB (publ)

1. The Parties

Complainant: Afterpay Pty Ltd
380 La Trobe Street
Level 16
Melbourne
Victoria
VIC 3000
Australia

Respondent: Klarna Bank AB (publ)
Sveavgen 46
Stockholm
Schweden
11134
Sweden

2. The Domain Name

afterpay.co.uk

3. Procedural History

- 3.1 I 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 such a nature as to call in to question my independence in the eyes of one or both of the parties.
- 3.2 On 31 October 2018 the dispute was received. On 2 November 2018 the complaint was validated and notification of it sent to the parties. On 21 November 2018 a response reminder was sent. On 23 November 2018 the response was received and notification of it was sent to the parties. On 28 November 2018 a reply reminder was sent. On 30 November 2018 the reply was received. On 3 December 2018 notification of it was sent to the parties and the mediator was appointed. On 5 December 2018 the mediation started. On 7 December 2018 the mediation failed and close of mediation documents were sent. On 18 December 2018 the Expert decision payment was received.

4. Factual Background

- 4.1 The Complainant is an Australian company founded in 2015. It facilitates commerce between retailers and their end customers by providing a 'buy now pay later' service

allowing customers to pay for products in four interest free instalments. The Complainant expanded into New Zealand in September 2017 and the US in May 2018. In August 2018 the Complainant announced that it would be entering the UK market.

- 4.2 The Complainant is the owner of the following trade mark registrations:
- (a) Australian Trade Mark 1774834 for AFTERPAY registered from 3 June 2016 in classes 9, 36 and 42;
 - (b) US Trade Mark 5435378 for AFTERPAY in classes 9, 36 and 42 with a registration date of 3 April 2018;
 - (c) New Zealand Trade Mark 1044325 for AFTERPAY in classes 9, 36 and 42 with a registration date of 6 December 2016; and
 - (d) International Registration 1335106 designating Singapore for AFTERPAY in classes 9, 36 and 42 registration of which was completed on 13 February 2018.
- 4.3 The Respondent was founded in Sweden in 2005 with the aim of making it easier for people to shop online. It offers direct payment, pay after delivery and instalment plan services. Its pay after delivery service allows customers to have their order delivered before payment; once the order is shipped customers have up to 30 days to pay depending on the store. The Respondent's services also allow a shopper to spread the cost of a purchase into equal monthly payments or to pay for the purchase in three equal interest free instalments. In the latter option the shopper provides a debit or credit card at checkout and the Respondent auto charges every month¹.
- 4.4 The Respondent registered the Domain Name on 5 September 2017² and began using it in September 2018 to redirect to the Respondent's web site at klarna.com/uk. The Respondent has since removed the redirect but intends to reactivate it once this dispute is concluded.
- 4.5 On 16 October 2018 the Complainant's CEO contacted the Respondent requesting the return of the Domain Name. On 18 October 2018 the Complainant's solicitors wrote to the Respondent requesting the transfer of the Domain Name. On 25 October 2018 the Respondent's representatives stated a response would be provided by 16 November 2018. On 29 October 2018 the Complainant's solicitors gave the Respondent's representatives until 5 November 2018 to substantively respond. The complaint was filed before that deadline.

Parties' Contentions

- 5.1 I set out below a summary of what I consider to be the main contentions of the parties.

The Complainant's complaint

Rights

- 5.2 The Complainant relies on its trade mark registrations for AFTERPAY and says that Rights under the Nominet Dispute Resolution Service Policy ("the Policy") includes foreign marks. It says the Domain Name is identical to AFTERPAY being wholly made up of the mark with no deletions or additions.

¹ Information on monthly and instalment payments taken from the Respondent's web site at klarna.com

² The complaint suggests the Domain Name was transferred to the Respondent in September 2018 but the Respondent has confirmed that it registered the Domain Name on 5 September 2017.

Abusive Registration

- 5.3 The Complainant relies on paragraph 5.1.1.2 of the Policy (see paragraph 6.6):
- (a) The Complainant contends the Respondent was aware of its prior use of the AFTERPAY mark. The Complainant says the Respondent offers the same services as it and so would have been aware of the Complainant's business, its expansion into New Zealand and the US and that expansion into the UK would be a likely next step.
 - (b) The Complainant says the Domain Name was registered on 5 September 2017 but was not used until September 2018 when the Domain Name was transferred to the Respondent and began to redirect Internet traffic to the Respondent's web site.
 - (c) The Complainant says it has made several offers to purchase the Domain Name none of which have received a response.
 - (d) The Complainant contends that the Domain Name refers to it; the Respondent has never been known by the name AFTERPAY; has no obvious justification for having adopted this name; and has not given any reason for registering the Domain Name. The Complainant says there is no evidence that the Respondent has used or intends to use the Domain Name other than to redirect Internet traffic searching for the Complainant's services to the Respondent's site and to prevent the Complainant from owning the Domain Name.
- 5.4 The Complainant relies on paragraph 5.1.1.3 of the Policy (see paragraph 6.6). It says the Respondent has made no bona fide use of the Domain Name and has used the Domain Name to direct Internet users searching for the Complainant's business to the Respondent's competing services.
- 5.5 The Complainant relies on paragraph 5.1.2 of the Policy (see paragraph 6.6):
- (a) The Complainant says it is globally renowned; its planned entry into the UK market was extensively covered; and the Domain Name began to redirect to the Respondent's site just after that entry became public knowledge.
 - (b) The Complainant argues that users of its services (or users who are aware of them), knowing of its intention to expand into the UK market, are likely to be confused when the Domain Name redirects them to the Respondent's site. The Complainant contends that Internet users searching for its UK based services are likely to guess the Domain Name and are likely to be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with it, as the Respondent offers similar services to it.

The Respondent's response

- 5.6 The Respondent denies that the Domain Name is an Abusive Registration for the reasons set out below.

Use of the Domain Name

- 5.7 The Respondent says it has offered 'after-pay' solutions for a significant time to its customers. It states the Domain Name registration was a step in promoting its services and this solution was born before the Complainant existed. The Respondent says it registered the Domain Name on 5 September 2017; that the Domain Name was centralised to its main registrar and domain name portfolio in September 2018 and put in use. The Respondent states it is common for large companies to have one or several appointed registrars to assist with technical redirects. The Respondent says it

is running a project where generic domain names are registered including the Domain Name and that domain names including generic words such as 'pay' and 'after' have been registered prior to and after this dispute. The Respondent states it uses many generic names to redirect to its web site and the Domain Name was attractive because it reflected a very obvious combination of two common generic terms.

The Complainant's trade marks

- 5.8 The Respondent acknowledges the Complainant's AFTERPAY trade marks in Australia and the US and notes the Complainant's application for an AFTERPAY device mark in the UK. The Respondent points out that the Complainant's US trade mark has a registration date 8 months after the Domain Name registration. It says there is no obligation on a potential domain name registrant to search trade mark registries around the world. The Respondent states that the Complainant's trade mark registrations do not automatically entitle the Complainant to domain names that reflect the mark and that the Complainant's trade mark is not very strong.

The Respondent's awareness of the Complainant's prior use of the mark

- 5.9 The Respondent says the Complainant does not operate in Sweden and does not have any EU trade mark applications or registrations. The Respondent's searches show a third party, Arvato Finance B.V. ("Arvato"), owns European trade marks for AFTERPAY. It contends that just because the parties operate in the same line of business doesn't mean it was aware of the Complainant's rights in the name when the Domain Name was registered.
- 5.10 The Respondent states it first became aware of the Complainant's rights when approached by the Complainant. The Respondent states that the Complainant has not provided any supporting documents, other than "local national newspaper releases", that the Complainant is globally renowned. The Respondent contends that the Complainant is not well-known in Sweden or the UK and, at most, is perhaps well-known in Australia. The Respondent says the Complainant only offers its services in Australia and New Zealand and that the Domain Name was registered independently from the Complainant's Australian enforceable rights.
- 5.11 The Respondent states that a Google search on 'afterpay' returns results for Arvato's AfterPay solution and that Arvato operates 'afterpay' domain names. The Respondent says that searches on Google Play and App Store for 'afterpay' show numerous alternative after pay companies available, for example PayPal provides a similar after pay solution. It says the Complainant's app is not available as it is not being used in Sweden or the UK.

The Complainant's allegation that the Domain Name was registered for the purpose of unfairly disrupting its business

- 5.12 The Respondent says there is no evidence that the Domain Name was primarily registered to sell it to the Complainant, to block the Complainant or to unfairly disrupt the Complainant's business. The Respondent states that the Complainant's exhibited press releases show the announcement of the UK expansion nearly a year after registration of the Domain Name; there are extracts from local newspapers in Australia and New Zealand about an expansion into the US; the exhibits are from Australian papers; and that it cannot be held responsible for not screening foreign newspapers before registering the Domain Name.

The Respondent's contention that AFTERPAY is not unique to the Complainant

- 5.13 The Respondent says Arvato owned the Domain Name until May 2017 and that Arvato also owns trade marks in Europe for AFTERPAY. The Respondent says this suggests

that the combination of 'after' and 'pay' is an obvious one and not unique to the Complainant.

Summary

- 5.14 The Respondent asserts that it registered the Domain Name to provide a genuine offering of goods and services in connection with its after pay solution. The Respondent says there is no evidence of actual confusion; that confusion under the Policy is to the identity of the person/entity behind the Domain Name; that the question is whether an Internet user seeing the Domain Name or the site to which it is connected believes or is likely to believe that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant; and that there is no such confusion. The Respondent asserts that AFTERPAY is not unique to the Complainant, is not likely to lead to a dispute and there is no obligation on a potential domain name registrant to search trade mark registries around the world. It contends the Complainant's Australian trade mark should not be given much weight when considering Abusive Registration. The Respondent says the following support that it could not have been aware of the Complainant's Rights when it registered the Domain Name: the Complainant is an Australian financial company with no presence in Sweden; the Complainant was not active in the UK at that time; and the Complainant has no trade mark rights in the UK. The Respondent contends that the Complainant has failed to demonstrate confusion on the more likely than not basis.

The Complainant's reply

- 5.15 The Complainant says the Respondent has failed to demonstrate that the Domain Name is not an Abusive Registration.

Use of the Domain Name

- 5.16 The Complainant says there is a clear distinction between 'pay later', 'pay after delivery' or 'pay after' which describe the Respondent's services and AFTERPAY which the Complainant has registered as a trade mark in multiple jurisdictions, is not descriptive of services and is the Complainant's registered name.
- 5.17 The Complainant states that the Respondent offers a 'pay later' service marketed as 'Pay-after-delivery' or 'Pay later [full stop]' and any reference to its business and services has been made using the descriptive 'pay after delivery' or 'pay later' phrases. The Complainant says the Respondent does not use and is not known by the name AFTERPAY.
- 5.18 The Complainant says it is evident from the Respondent's other domain names that its interests lie in the descriptive 'pay', 'pay later' or 'pay after' terms and not in AFTERPAY. The Complainant points out that the Respondent says after-pay.se redirects to "Klarna's pay after solution". The Complainant states the site at this URL refers to 'pay after delivery' services and makes no reference to AFTERPAY.
- 5.19 The Complainant says the Respondent's site brands its UK offering 'Pay Later' and that a Google search on 'Klarna Pay After' returns results for 'Pay Later'.
- 5.20 The Complainant states that the Respondent's UK offering 'Pay Later. - Klarna UK' on the Respondent's web site refers to a service called 'Pay Later' and AFTERPAY is not referenced.
- 5.21 The Complainant argues that the Respondent's web sites, domain names, marketing, offerings and services show that the Respondent has only ever been known as 'Klarna' and has a 'Pay Later.' brand or service description utilizing its 'pay after delivery' technology. The Complainant says the Respondent has never been known as

AFTERPAY; has not branded itself, its affiliates or any of its offerings or services as AFTERPAY; and is not connected with the phrase AFTERPAY in the mind of consumers.

The Complainant's trade marks

- 5.22 The Complainant says the Domain Name was registered over a year after registration of its Australian trade mark and that AFTERPAY is distinctive and non-descriptive otherwise it would not have succeeded with its trade mark registrations.

The Respondent's awareness of the Complainant's prior use of the mark

- 5.23 The Complainant says the Respondent's acknowledgement that it is possible for a third party to own rights in AFTERPAY is inconsistent with its assertion that the Domain Name is made up of two common generic terms that it selected innocently. The Complainant says it is irrelevant to the complaint that the Domain Name is similar to rights registered by a third party.

- 5.24 The Complainant points out that PayPal refer to a service called 'Pay After Delivery' not AFTERPAY.

The Complainant's allegation that the Domain Name was registered for the purpose of unfairly disrupting its business

- 5.25 The Complainant says it is not credible that the Respondent was unaware of AFTERPAY when the Domain Name was registered given the media attention at the time. The Complainant points out that the Respondent only began using the Domain Name one month after the Complainant announced its expansion into the UK.

Summary

- 5.26 The Complainant says the Domain Name was registered over a year after registration of its first trade mark and was not used until after it announced its UK expansion. The Complainant states the Respondent is not known as AFTERPAY, has not marketed any offering or service called AFTERPAY and that AFTERPAY is not associated with the Respondent. The Complainant argues that Internet users looking for the Respondent's services will search for 'Klarna' or 'Klarna Pay Later' and those looking for the Complainant's services will search for AFTERPAY. The Complainant argues that registration of the Domain Name is intended to disrupt its business and will confuse people and businesses searching for the Complainant into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

6. Discussions and Findings

- 6.1 Paragraph 2.2 of the Policy sets out that the Complainant is required to prove to the Expert that both of the following elements are present 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.*

The Complainant's Rights

- 6.2 Under Paragraph 1 of the Policy, Rights means "*rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.*"

- 6.3 On the basis of the Complainant's registered trade marks set out at paragraph 4.2 I consider the Complainant has Rights in the AFTERPAY mark. As paragraph 1.5 of the

Dispute Resolution Service – Experts’ Overview makes clear Rights includes overseas trade mark registrations. The AFTERPAY mark is identical to the Domain Name (disregarding the .co.uk suffix which it is usual to ignore). I am therefore satisfied that the Complainant has Rights in respect of a name or mark, AFTERPAY, which is identical to the Domain Name.

Abusive Registration

- 6.4 Under Paragraph 1 of the Policy Abusive Registration means 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.*
- 6.5 It is sufficient to satisfy either of these limbs for there to be a finding of an Abusive Registration.
- 6.6 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration are set out at paragraph 5 of the Policy including:
- 5.1.1 *Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*
 - 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.*
- 6.7 The Complainant relies on paragraphs 5.1.1.2 and 5.1.1.3 of the Policy which relate to the Respondent’s motives for registering the Domain Name. For there to be an Abusive Registration under paragraph 1.i. of the Policy it generally must be established that the Respondent knew of the Complainant and/or its Rights at the time of registration of the Domain Name. In this case the Respondent denies such knowledge. The Complainant contends that is not credible given the media attention it received at that time.
- 6.8 In DRS 04331 Verbatim Ltd v Michael Toth the Appeal Panel stated that “*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*”. I will therefore carefully assess the evidence in order to determine whether, on the balance of probabilities, the Respondent was aware of the Complainant and/or its Rights when the Domain Name was registered.
- 6.9 The Complainant is an Australian company which the evidence shows has grown significantly since being founded in 2015. In 2016 it was listed on the Australian stock exchange and in 2017 won the Australian fintech of the year prize at the annual industry awards. In May 2017 the Complainant announced its first overseas expansion

into New Zealand which took place in September 2017. The Complainant has provided two press articles from May 2017 publicising its launch into New Zealand.

- 6.10 The Respondent says the Domain Name was registered to promote its services. The Respondent states in its response that it has been offering 'after pay' solutions for a significant period to its customers and that its 'after pay' solution allows its customers to submit payment after an order has been delivered to them. In support of its 'after pay' solution the Respondent relies on a press release relating to a partnership with ASOS in the Nordics and on extracts from its web site which describe its services. However, the press release refers to 'pay after delivery' and the Respondent's exhibited extracts from its web site (as well as the extracts exhibited by the Complainant) refer to 'pay after delivery' and to 'pay later', not 'after pay'. Having considered the evidence I do not consider that the Respondent uses the term 'after pay' for its services.
- 6.11 The Respondent says it is running a project where generic domain names are registered including the Domain Name and that domain names including generic words such as 'pay' and 'after' have been registered prior to and after this dispute. It relies on the following domain names which redirect to pages on the Respondent's web site (these pages refer to 'pay later' and 'pay after delivery'): payklarna.co.uk; payklarna.com; pay-after.co.uk; after-pay.se; and payafter.se. The Respondent says it uses many generic domain names to redirect to its web site such as smooth.com for its smooth payments.
- 6.12 I do not regard payklarna.co.uk and payklarna.com to be generic domain names since they include the Respondent's 'klarna' brand. With regard to the other three domain names relied on, the Respondent says these were registered prior to and after this dispute; however, no registration dates are given. My own enquiries show that pay-after.co.uk was registered on 24 October 2018, after the Complainant's solicitors had written to the Respondent and the day before the Respondent's representatives responded, and that both after-pay.se and payafter.se were registered on 7 November 2018, after the complaint had been sent to the Respondent. I therefore do not regard the registration of these domain names a year after the Domain Name registration and after the Complainant had sought the return of the Domain Name as relevant to the Respondent's motives for registering the Domain Name.
- 6.13 I do not accept the Respondent's contention that the Domain Name is a generic domain name which reflects a very obvious combination of two common generic terms. Whilst the individual words 'pay' and 'after' are ordinary English words, in my view there is a distinction to be made between the combinations 'pay after' and 'after pay'. The phrase 'pay after' could be considered an obvious combination of two ordinary English words; it is a recognised phrase in the English language which is descriptive of payment after an event, for example payment after delivery. In contrast 'after pay' is not a common expression and indeed is grammatically incorrect (compared to 'after payment'). The Respondent's search results for 'afterpay' in the Google Play store show apps for the Respondent, PayPal, Amazon, ebay, Ikea and others but there is no reference to 'after pay' in the app results; rather one app refers to 'Pay Later'. The Respondent has not shown any use of 'after pay' by these entities. It says that PayPal provide an after pay solution; however, PayPal refer on its web site to 'Pay After Delivery'. I consider the evidence shows that 'after pay' is used only by the Complainant and Arvato (see below) who each own trade mark registrations for the mark and do not consider the Respondent has established that 'after pay' is generic or used as a descriptive term.

- 6.14 Overall I am unconvinced by the Respondent's explanation for registering the Domain Name. However, when the Domain Name was registered the Complainant's business was in Australia; in May 2017 the Complainant announced its first international expansion into New Zealand; the Complainant has adduced limited press coverage in relation to that expansion; and there is no evidence before me that the Respondent traded in Australia or New Zealand at that time. I therefore regard it as feasible that the Respondent was unaware of the Complainant and/or its Rights when the Domain Name was registered and, having weighed the evidence, I do not consider, on the balance of probabilities, that the Respondent was aware of the Complainant and/or its Rights when the Domain Name was registered. I note the Respondent's evidence shows that Arvato owns EU trade marks registrations for a figurative AFTERPAY mark; Arvato used to own the Domain Name; and Arvato operates a 'buy now pay later' service under the AfterPay name from sites at afterpay.de, afterpay.se, afterpay.no and afterpay.nl. I speculate that the Respondent may have had Arvato in mind when it registered the Domain Name but say nothing further on this.
- 6.15 I therefore do not consider that the Domain Name, in the hands of the Respondent, is an Abusive Registration under paragraph 1.i. of the Policy.
- 6.16 It now has to be determined whether there is an Abusive use of the Domain Name under paragraph 1.ii. of the Policy. This necessitates a consideration of whether the Respondent has done something to take advantage of or to exploit its position once it became aware of the Complainant's Rights.
- 6.17 The Domain Name was not in use until September 2018 when it began to redirect to the Respondent's web site. The Respondent states that it first became aware of the Complainant's Rights when it was approached by the Complainant. From the Complainant's evidence its first approach to the Respondent was on 16 October 2018. The Respondent therefore appears to be claiming it was unaware of the Complainant's Rights when it commenced use of the Domain Name. The Complainant refutes that is the case and relies on the press coverage relating to the expansion of its business into the UK in August 2018. As before in accordance with the Appeal Panel decision in DRS 04331 I will carefully scrutinise the Respondent's denial to determine whether, on the balance of probabilities, the Respondent was aware of the Complainant and/or its Rights when use of the Domain Name commenced.
- 6.18 The Complainant's evidence shows that in May 2018 it announced its launch into the US in partnership with Urban Outfitters and that in August 2018 it announced its launch into the UK. The August 2018 press extracts report that the Complainant would be acquiring a UK payments business; would be raising \$108 million in new equity to fund its overseas growth; had approximately 2.3 million customers; and had more than 16,500 retailers integrated with its platform, growing to 17,700 retailers as at 23 August 2018 (presumably after the acquisition).
- 6.19 The Respondent says the Complainant's exhibits regarding the UK expansion are from the Australian press. However, this does not necessarily mean that the expansion was not reported more widely. I regard it as suspicious that no use of the Domain Name was made for about a year after its registration and that use as a redirect started soon after the Complainant announced its UK expansion. So what does the Respondent say on this? The Respondent explains that in September 2018 the Domain Name was centralised to its main registrar and domain name portfolio and says it is common for large companies to have one or several appointed registrars to assist with technical redirects. However, this does not explain why use was only commenced in September 2018; a redirect could have been put in place with the previous registrar.

- 6.20 Overall I am unconvinced by the Respondent's explanation for commencement of use of the Domain Name in September 2018. I consider that the Respondent became aware of the Complainant's UK expansion and was prompted by this to use the Domain Name as a redirect to its web site. I therefore consider the Respondent was aware of the Complainant's Rights when it began use of the Domain Name. In any event the Respondent has threatened to use the Domain Name to redirect to its web site knowing of the Complainant's Rights. The Respondent says in its response that it has removed the redirect as a gesture of goodwill but will reactivate the redirect as soon as this dispute has concluded. Paragraph 5.1.2 of the Policy, which I consider to be relevant, makes it clear that I can take such threatened use of the Domain Name into account. Accordingly, I will consider whether the Respondent's use of the Domain Name as a redirect to its web site 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.
- 6.21 The Complainant has shown that it uses the AFTERPAY mark for its business in Australia, New Zealand and the US and that a significant number of customers and retailers use its services. The exhibited August 2018 press releases report that the Complainant will use the AFTERPAY mark in the UK, transitioning out the brand of the acquired UK payments business and that the acquisition of the UK business will allow the Complainant to accelerate its entry into the UK market with the Complainant acquiring the contracts of the UK business with relevant service providers. In such circumstances I consider there is a real risk that Internet users, particularly those based in the UK, guessing the Complainant's URL will use the Domain Name and thereby visit the site at the Domain Name. I also consider there is a real risk that Internet users will visit the site at the Domain Name in response to a search engine request looking for the Complainant. There is a risk that users who find the site at the Domain Name when looking for the Complainant will be diverted into obtaining the Respondent's competing services. Even if users appreciate that they have not found the Complainant when they reach the site at the Domain Name, the Respondent has still used the Domain Name in a way to cause initial interest confusion that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainant.
- 6.22 In reaching my finding on likely confusion I have taken into account the Respondent's evidence that a Google search in Sweden for 'afterpay' returns results for Arvato. I consider the search results may be influenced by the Complainant not operating in Sweden. In any event notwithstanding that a third party uses the AfterPay brand I consider the Complainant's use of AFTERPAY is such that there is a real risk of initial interest confusion namely, as set out above, that speculative visitors to the Respondent's web site, in particular those based in the UK, will be visiting it in the hope and expectation that the site is operated or authorised by, or otherwise connected with the Complainant.
- 6.23 Accordingly I consider that the Domain Name is an Abusive Registration under paragraph 1.ii. of the Policy. In reaching my finding I have considered Paragraph 8 of the Policy which contains a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. In this case I do not find any of these factors apply.

7. Decision

- 7.1 I find that the Complainant has Rights in a name or mark which is identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 I direct that the Domain Name be transferred to the Complainant.

Signed Patricia Jones

Dated 14 January 2019