

DISPUTE RESOLUTION SERVICE

D00021865

Decision of Independent Expert

SeatGeek

and

Ms Vanmala Bansode

1. The Parties:

Lead Complainant:

SeatGeek
400 Lafayette St Fl 4
New York
NY 10003
USA

Respondent:

Ms Vanmala Bansode
Farande Nagar
Nanded
53100
Italy

2. The Domain Name(s):

seat-geek.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 into question my independence in the eyes of one or both of the parties.

18 September 2019 Dispute received
19 September 2019 Complaint validated
19 September 2019 Notification of complaint sent to parties
08 October 2019 Response reminder sent
11 October 2019 No Response Received
11 October 2019 Notification of no response sent to parties
23 October 2019 Summary/full fee reminder sent
23 October 2019 Expert decision payment received

4. Factual Background

The Nominet records show that the Domain Name was registered on 6 August 2019.

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

- a. The Complainant owns trade mark registrations for SEATGEEK.
- b. The Complainant has made extensive use of the SeatGeek name for 10 years. The Complainant has thereby established goodwill in the name.
- c. The Respondent has not been authorised by the Complainant to use the Domain Name.
- d. On the same day as registering the Domain Name, the Respondent sent an email to the Complainant offering to sell the Domain Name and, in subsequent correspondence, demanded £999 to transfer 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 Complainant, SeatGeek, Inc., is a New York-based company specialising in event ticket aggregation, which allows customers to browse seats available

at events and purchase them. SeatGeek, Inc. has additional offices in the United Kingdom, Israel, Netherlands, Australia and Italy, has an estimated annual revenue of 27.6M USD and raised around 160M USD in funding, notably from celebrity Ashton Kutcher. The Complainant was founded in 2009 by Russell D'Souza, Jack Groetzinger (who is the Complainant's current CEO) and Eric Waller. The Complainant has been widely covered in the media, such as being profiled as "The Hottest Ticket In Mobile" by Forbes magazine and was a finalist at the 2009 TechCrunch50 conference.

- (2) The Complainant's services are available on desktop and through a mobile app. The Complainant's website, www.seatgeek.com, totals over 4 million visits per month, and its app is ranked number 34 for 'Entertainment' apps on Apple devices. The website was registered on the 16th July 2009 and is now one of the most used event ticketing sites on the Internet. Users can browse seats available at events and view colour-coded seat-maps in order to make an informed decision. It also provides a ticket search engine, a Deal Score (analysing ticket listings), and interactive 3D maps. The Deal Score feature assigns a 0-100 metric to all listed tickets in order to ascertain relative value.
- (3) SeatGeek, Inc. has a number of sub-brands which are used to provide specific services. For example, SeatGeek Enterprise is a front-to-back stack of services which power an open ticketing world in which venues and rights holders have flexibility, transparency and full monetisation potential. SeatGeek Open specialises in marketing to fans in order to increase ticket sales. SRO includes automated reporting and a customisable rules-based engine, and offers partner services including support. The Complainant also offers customers an event discovery tool through its Columbus event calendar and Spotify applications, taking into account the individual preferences of the customer.
- (4) The Complainant has undertaken many partnerships in order to expand its business and make its services accessible to a wider audience. In June 2018, SeatGeek, Inc. partnered with the popular social media app Snapchat to facilitate the purchasing of event tickets through the Snapchat app. This was the first ticket-buying experience built into the Snapchat app. In addition, the Complainant has partnered with the popular transportation app Lyft to provide customers with a mode of transportation to events which drops them off relative to where their seat is located at a venue. These partnerships have allowed the brand "SEATGEEK" to permeate many sectors, increasing visibility and accessibility to the brand.
- (5) The Complainant also has partnerships with popular professional organisations, such as New Orleans Pelicans, Manchester City F.C. and major sports leagues such as the National Football League (NFL) and Major League Soccer. In particular, the Complainant became a distribution partner for the NFL in March 2018, allowing fans to access and purchase tickets through its own marketplace, which includes primary tickets sold directly from the clubs as well as resale tickets listed by fans.

- (6) The brand “SEATGEEK” is derived from two English words ‘seat’ and ‘geek’ which are suggestive of the Complainant’s expertise. The Complainant has acquired widespread consumer goodwill by virtue of its 10 years using the brand “SEATGEEK”. As part of their efforts to protect their intellectual property, the Complainant, its affiliates, subsidiaries and associated companies own trade marks within numerous jurisdictions including, but not limited to, the following trade marks:
- United States Trade mark, “SEATGEEK”, registration number 4062477, registration date 29-11-2011 for class 42.
 - United States Trade mark, “SEATGEEK”, registration number 4898019, registration date 09-02-2016 for classes 9, 35, 41 and 42.
 - Canadian Trade mark, “SEATGEEK”, registration number TMA966186, registration date 20-03-2017 for classes 9, 35, 41 and 42.
 - European Union Trade mark, “SEATGEEK”, registration number 014248711, registration date 14-10-2015 for classes 9, 35 and 41.
- (7) The Complainant’s brand “SEATGEEK” has been used in trade since 2009 and has been registered as a trade mark since 2011. The Complainant submits copies of some of their trade marks for the Panel’s reference (Annex H).
- (8) As mentioned above, the Complainant uses their trade mark, “SEATGEEK” as part of their company logo to distinguish their services from their competitors and has acquired a significant amount of goodwill and recognition globally.
- (9) The Complainant has also established a social media presence and uses their trade mark “SEATGEEK” to promote their services under this name, in particular on Instagram, Facebook, Twitter and YouTube.
- (10) The Complainant holds registered trade marks for its brand “SEATGEEK”. It is established that such evidence is sufficient to prove ownership of a ‘legally enforceable right’ for the purposes of the Policy (Experts’ Overview, Version 3, Paragraph 2.2). In addition, the Complainant has acquired widespread consumer goodwill since its establishment in 2009.
- (11) Panels in other domain name dispute resolution services have recognised the Complainant’s rights in the “SEATGEEK” mark (e.g. SeatGeek, Inc. v. Nash Enterprises, Inc., WIPO Case No. D2019-0415 [UDRP]). The fanciful nature of the Complainant’s “SEATGEEK” mark has also been recognised in previous domain name disputes, such as Seatgeek, Inc. v. Lokesh Kumar, WIPO Case No. DAU2018-019 [.auDRP] where the Panel stated that the “SEATGEEK” mark is “unique and distinctive”.
- (12) Pursuant to the Policy, the Complainant asserts that the Domain Name is similar to a name or mark in which the Complainant has rights.
- (13) The Complainant’s registered trade marks in issue are recognizable within the limits of the second level domain. The Domain Name, <seat-geek.co.uk>, contains the Complainant’s distinctive “SEATGEEK” trade mark with mere addition of a hyphen. By applying the ‘identical or similar’ test under the

Policy - the visual, phonetic and conceptual comparison of the Complainant's registered trade marks and the Domain Name - a 'similarity' is plainly present. Other than the hyphen, there is no alteration or adornment to the Complainant's distinctive "SEATGEEK" trade mark in the Domain Name.

- (14) It is established by Nominet decisions that the mere addition of a hyphen should not negate a finding on similarity (see, for example, the decisions of *Consorzio del Prosciutto di Parma v. Vital Domains Limited*, DRS 00359 and *HQUK Ltd. v. Headquarters*, DRS 01405).
- (15) The '.co.uk' extension should be disregarded, as it is merely a technical requirement which does not create a new impression in the eyes of the typical Internet user. Such practices have been established in previous Nominet decisions, such as *Ferrero S.p.A. v. Peter Ross*, DRS 9187, where it was stated: "Ignoring [...] '.co.uk', the Complainant's mark and Domain Name are identical" and *TTT Moneycorp Limited v. Domain Management*, DRS 18063: "The ccTLD .co.uk may also be disregarded for this purpose."
- (16) The Complainant therefore has rights in the "SEATGEEK" mark and that it is identical or similar to the Domain Name <seat-geek.co.uk>.

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

- (1) Paragraph 5.1.1 of the Policy lists circumstances indicating that the Respondent registered the Domain Name in an abusive manner. The Complainant submits that the Respondent registered the Domain Name for the purposes of selling the Domain Name to the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs.
- (2) The Domain Name was registered on the 6th August 2019. On the same day, the Complainant received an email from the Respondent offering the Domain Name for sale. The fact that the Respondent, on the same day as registering the Domain Name, sent an unsolicited offer for sale to the Complainant, is evidence that the Respondent registered the Domain Name in order to sell it to the Complainant. Upon receiving a cease and desist letter from the Complainant's representatives, the Respondent demanded £999 (GBP) for the transfer of the Domain Name. The price of £999 (GBP) is also listed on the website, and on a domain name aftermarket site where the Domain Name is advertised.
- (3) The Complainant submits that this sum of money is in excess of the Respondent's out-of-pocket costs, particularly given the recent registration of the Domain Name. The Respondent in his unsolicited offer stated that the Complainant "seems [to] own many other extensions" and that it "is always good to have brand awareness worldwide". This shows awareness of the "SEATGEEK" brand. The evidence suggests the Respondent's valuation of £999 (GBP) is based on the goodwill acquired by the "SEATGEEK" brand. The Respondent further attempts to profit from the Complainant's goodwill by using Pay-Per-Click (PPC) advertising links to earn revenue.

- (4) Under similar circumstances, the Panel in *Zambon S.p.A. v. Ms Vanmala Bansode* [the Respondent in this case], DRS 20003 stated that: “It is highly likely that when registering the Domain Name, the Respondent will have known that its existence would block the Complainant from registering it and that its subsequent use would be able to ride on the coat tails of the Complainant’s goodwill and reputation. [Respondent] therefore saw an opportunity to take advantage”. The *Zambon S.p.A.* case involved a respondent [the Respondent in this case] offering the domain name for sale to the trade mark holder while referring to “the importance of the UK market and the fact that the Complainant already had many other domain names comprising its ZAMBON name and that [respondent] thought the Domain Name might also be of interest to the Complainant.”
- (5) It is inconceivable for the Respondent not to have known of the Complainant’s “SEATGEEK” trade marks. By sending an unsolicited email to the Complainant (obtaining the email address necessary to do so would have required research into the Complainant by the Respondent), the Respondent is clearly targeting the Complainant. By their own admission, the Respondent is aware of the Complainant’s commercial operations (stating in that email “This domain can be useful for your business”, “It seems you have many other extensions” and “It is always good to have brand awareness worldwide”). At the least, the Complainant’s trade marks have existed up to 8 years prior to the registration of the Domain Name, and information on the Complainant’s trade mark registrations and services are publically available on trade mark databases and Internet search engines respectively. Indeed, the Complainant is at the top of results on Internet search engines when searching for “SEATGEEK” or even ‘Seat-Geek’.
- (6) Further evidence of an abusive registration is listed in Paragraph 5.1.3 of the Policy. The Complainant demonstrates that the Respondent has engaged in a pattern of abusive registrations, in that they relate to distinctive and famous third-party trade marks. Examples of the Respondent’s abusive registrations include, but are not limited to:
- <arlafoods.net.in> / “ARLA FOODS”
 - <balenciaga.co.za> / “BALENCIAGA”
 - <capgemini.asia> / “CAPGEMINI”
 - <kuehne-nagel.asia> / “KUEHNE & NAGEL”
 - <qatar-airways.fr> / “QATAR AIRWAYS”
- (7) The above domain names are identical or similar to famous third-party trade marks. While the trade marks infringed relate to a variety of sectors, some patterns emerge, such as the use of hyphens (<kuehne-nagel.asia>, <qatar-airways.fr>) and the focus on country-code top level domains, or at least top level domains which relate to geographical areas (such as ‘.asia’). The Complainant submits that the Respondent registers, for his own commercial gain, domain names that ‘ride upon the coattails’ of famous trade marks and their goodwill, particularly by attempting to sell them to the rightful owners (see WIPO Case No. D2019-0429, *infra*). The Complainant submits that the

Respondent has, therefore, deployed a ‘conscious policy’ of abusive registrations.

- (8) The Respondent has been involved in a previous domain name dispute under the Uniform Domain Name Dispute Resolution Policy regarding the domain name <regeneron.asia> (Regeneron Pharmaceuticals, Inc. v. Domain Admin, Whois Privacy Corp. / Bansode, WIPO Case No. D2019-0429). So too in that case did the Respondent send an unsolicited offer for sale to the complainant on the day of registration.
- (9) The Complainant submits that the above should be considered evidence in favour of finding an abusive registration by the Respondent.
- (10) In anticipation of the Respondent’s defence, the Complainant avers that the Respondent has no grounds to deny that the Domain Name constitutes anything but an abusive registration. The Complainant contends that the Respondent’s conduct does not qualify under any of the categories listed under the Policy, and the Complainant is unaware of any other grounds on which the Respondent can base his defence.
- (11) Prior to any notice of the current Complaint, the Respondent has not used or made demonstrable preparations to use the Domain Name with a genuine offering of goods or services. The Domain Name is used merely to host PPC advertising links. In fact, some of the PPC links can be construed to relate directly to the Complainant’s field of services (namely ‘Tickets Concerts’ under the ‘Entertainment’ heading). This is not a genuine offer of services, as the Respondent registered the Domain Name with intent to exploit the goodwill and recognition of the “SEATGEEK” trade mark. The “SEATGEEK” term is not generic, therefore the Respondent cannot argue that they registered the Domain Name other than for its value as a well-known trade mark.
- (12) There is no evidence to suggest the Respondent has been commonly known by “SEATGEEK” nor ‘seat-geek’. The Respondent’s name bears no resemblance to these terms. In addition, the Respondent’s conduct is not indicative of a registrant who is legitimately connected with the terms comprising the Domain Name. Nor is there any agreement between the Complainant and the Respondent which would allow the Respondent to make use of its “SEATGEEK” trade mark. Clearly, the mere ownership of a domain name does not confer a right or legitimate interest on the Respondent.
- (13) By attempting to sell the Domain Name, and by using it to host PPC advertising links, the Respondent is plainly not making a legitimate non-commercial or fair use of the Domain Name. Instead, the Respondent exploits the value attached to the “SEATGEEK” trade mark by offering the domain name for sale for more than the Respondent’s out-of-pocket costs in maintaining the domain name.

Response

The Respondent has not filed a Response.

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 name and mark SEATGEEK. These rights comprise the Complainant's trade mark registrations, together with goodwill arising from its use of the name SeatGeek, such goodwill also being a legally protectable right.

Disregarding the hyphen and the generic .co.uk suffix, the Domain Name is identical to the SEATGEEK name and mark 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 relevant factors under paragraph 5 on which the Complainant relies 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;

5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern”

By way of preliminary comment, although the Respondent has not filed a Response, it is still necessary for the Complainant to prove its case. It is nevertheless relevant that the Respondent has not sought to provide any explanation for why it chose to register the Domain Name.

On the same day as registering the Domain Name, the Respondent sent an email to the Complainant offering to sell the Domain Name. This manifestly proves that the Respondent was fully aware of the Complainant at the time of registering the Domain Name.

In subsequent correspondence, the Complainant then demanded £999 to transfer the Domain Name. Taking into account the timing of the Respondent's first contact with the Complainant and the identical nature of the Domain Name, it is clear to me that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant for a profit. In other words, the factor under paragraph 5.1.1.1 of the Policy applies.

Having found that the Respondent intended to sell the Domain Name to the Complainant for a profit, I conclude that the registration of the Domain Name therefore took unfair advantage of and was unfairly detrimental to the Complainant's Rights. There is nothing in this case which could lead to a conclusion that such purpose could be anything other than unfair.

In addition, the Complainant makes submissions relating to other domain names registered by the Respondent and to a UDRP decision against the Respondent. Furthermore, the Complainant also references the decision in DRS20003 (Zambon v Vanmala Bansode) without stating that the respondent in that case was the Respondent in this case. In DRS20003, the facts were that the respondent had offered to sell the domain name *zambon.co.uk* to the Italian pharmaceutical company, Zambon S.p.A., first making contact with the company four days after registering the domain name. The expert in DRS20003 found that the domain name was an Abusive Registration.

The above shows a pattern of abusive registrations of which the Domain Name forms part. This reinforces my conclusion that the registration of the Domain Name therefore took unfair advantage of and was unfairly detrimental to the Complainant's Rights.

The Domain Name is therefore an Abusive Registration.

7. Decision

Having found that the Complainant has Rights in respect of a name and mark 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 *seat-geek.co.uk* be transferred to the Complainant.

Signed:

Dated: 31 October 2019

Jason Rawkins