

## **DISPUTE RESOLUTION SERVICE**

**D00022071**

### **Decision of Appeal Panel**

**Gravity Products LLC**

and

**Synapsa Med sp.zo.o.**

#### **1. The Parties:**

Lead Complainant: Gravity Products LLC  
Ste 108  
181 N 11th St.  
New York  
11211  
United States

Respondent: Synapsa Med sp.zo.o.  
Wrocławska 7  
Jelcz-Laskowice  
Dolnoslaskie  
55-220  
Poland

#### **2. The Domain Name(s):**

gravityblankets.co.uk

### **3. Procedural History**

This is an appeal by the Complainant against the full decision of Clive Trotman (the “Expert”) issued on 9 March 2020 in favour of the Respondent. The original Complaint was filed on 15 November 2019. The Complainant notified its intention to appeal on 25 March 2020, having paid a deposit, and the Appeal Notice was filed and the balance of the appeal fee paid on 20 April 2020.

Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy (as in effect from 1 October 2016) (the “Policy”) unless the context or use indicates otherwise.

Claire Milne, David King and Philip Roberts (together, the “Panel”) have each made a statement to the Nominet Dispute Resolution Service in the following terms:

“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.”

### **4. The Nature of This Appeal**

Paragraph 20.8. of the Policy provides that: “The appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal response, unless they believe that it is in the interests of justice to do so”.

The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits.

### **5. Formal and Procedural Issues**

The only issue in this case that might be seen as formal or procedural is one of the grounds for appeal: the Expert considered evidence in Polish submitted (without translation) by the Respondent, even though the Policy at 3.3 says “Communication shall be made in English”. The Panel will discuss this issue in Section 8.3 below.

### **6. The Facts**

The following facts are based on uncontested evidence provided by the parties.

Both parties to this dispute are in the business of manufacturing and selling “weighted blankets”, which they each refer to as “gravity blankets”. These are bedcovers made like quilts, with many small sewn pockets, which hold in place both

a soft, warm filling and hard, dense beads or pellets. The resulting heavy items are claimed to “hug” their users, with soothing and even therapeutic effects.

The Complainant started its business in the USA, incorporating the company Gravity Products LLC in the State of Delaware on 10 April 2017 and registering the domain name <gravityblankets.com> on 12 April 2017.

The Respondent was incorporated on 14 February 2013 in the name of Vulgaris sp.z.o.o. At some point in 2016 (it is not clear on exactly which date this took place) the name of that company was changed to Synapsa Med sp.z.o.o. The Respondent started its business in Poland, where on 1 September 2016 it entered into a marketing contract.

Both companies have expanded their sales and marketing to other countries, including the United Kingdom. The Respondent registered the Domain Name on 30 October 2017. Both <gravityblankets.com> and <gravityblankets.co.uk> are in current use promoting the respective parties’ products.

The Complainant holds the following trademarks:

GRAVITY, in standard characters, United States Patent and Trademark Office (USPTO), principal register, filed 19 January 2018, stated first use in commerce April 2017, registered 4 September 2018, registration number 5554437; international registration number 1410443; class 24 (bed blankets), opposition by the Respondent pending;

GRAVITY, stylised font, USPTO, principal register, filed 19 January 2018, stated first use in commerce April 2017, registered 4 September 2018, registration number 5554556; international registration number 1410681; class 24; opposition by the Respondent pending. The font is elongated vertically and the letter capital “A” is similar to an inverted “V”;

GRAVITY, in standard characters, International Trademark, registered 5 June 2018, registration number 1410443, class 24; UK Intellectual Property Office (UKIPO) designation date 20 November 2018;

GRAVITY, stylised font, International Trademark, registered 5 June 2018, registration number 1410681, class 24; UKIPO designation date 20 November 2018.

The EU designations of the Complainant's International Trademarks are currently opposed by the Respondent.

The Respondent holds the following trademarks:

GRAVITY, word mark, European Trademark, filed 9 November 2018, registered 26 February 2019, registration number 17982729, class 10 (therapeutic weighted blankets);

GRAVITY, UKIPO, filed 18 November 2018, registered 8 February 2019, registration number 3354360, class 10. Registered in the name of 'Senso-Rex Ltd'.

The Complainant has filed for cancellation of the Respondent's trademarks in the EUIPO and UKIPO. The EUIPO cancellation proceedings are currently suspended because the Complainant's EU designation of its two International trademarks is under opposition.

The Respondent also owns the domain names kolderka.net, created on 30 July 2015 and initially registered to Vulgaris Magistralis Sp.z.o.o. and latterly to the Respondent, and senso-rex.com, created in the name of the Respondent on 3 February 2017. The website at kolderka.net directs to the website at senso-rex.com which promotes weighted blankets.

On 21 May 2018 Mike Grillo of the Complainant emailed the Respondent requesting takedown of allegedly stolen material at gravityblankets.co.uk. Mateusz Goliszek of the Respondent replied on the same day, among other things saying that the materials used on the website were all their own, and proposing co-operation in marketing in Europe.

In parallel with this Nominet proceeding, as is apparent from the information above on trade marks, the parties are disputing each other's trade marks. In addition, there is a continuing dispute between the parties about their pages on Amazon.

## **7. The Parties' Contentions**

This summary of the parties' contentions is limited to material that appears to the Panel to be relevant to their domain name dispute. This means omitting much of what the parties say about their parallel trade mark and Amazon disputes, the relevance of which will be discussed in Section 8.1.

### **7.1 Complainant**

In its complaint, the Complainant pointed to its Rights in the word "gravity" acquired through the trade marks listed in Section 6, and claimed that "gravity" was the significant element in the compound term "gravityblankets". It also mentioned common law Rights established through trading use since 26 April 2017, substantiated by evidence of a successful Kickstarter campaign starting on that date which used the word "gravity" in connection with blankets, and subsequent press and social media coverage. It registered its domain name gravityblankets.com on 12 April 2017.

It alleged Abusive Registration by the Respondent on the following grounds:

- a) Registration for the purpose of blocking the Complainant from registering the name (Policy paragraph 5.1.1.2).

- b) Registration for the purpose of unfair disruption of the Complainant's business (Policy paragraph 5.1.1.3).
- c) Usage causing or likely to confuse people into believing it is linked to the Complainant (Policy paragraph 5.1.2).
- d) Registration of a name which exactly matches one in which the Complainant has Rights, without reasonable justification (Policy paragraph 5.1.6).

Grounds a) and b) are argued mainly on the basis of consistency with the Respondent's other actions allegedly aiming to disrupt the Complainant's business, that is, the trade mark and Amazon disputes.

Ground c) is argued on the basis of the similarity of the two parties' websites, supported by citations from earlier cases.

Ground d) is argued on the basis that the Complainant was so well known at the time of registration that the Respondent must have had it in mind when registering the Domain Name, and intended to mimic its operations. The Complainant claims further that the Respondent's logo and website are so like the Complainant's that they must have been copied.

In its Reply to the Response, the Complainant highlights several difficulties with the Respondent's evidence. These include the fact that many documents are in Polish, that crucial details such as dates and company names are missing from some documents, that parts are so badly reproduced as to be illegible, and that much of it is irrelevant to the current dispute. It identifies a number of inaccuracies and errors in the Response.

It also provides evidence of actual confused customers who were trying to contact the Respondent but ended up with the Complainant, and notes the Respondent's lack of comment on the similarity of the two websites and logos.

In the Appeal Notice, the Complainant contends that the Expert's Decision is wrong on two grounds:

- a) The Expert took into account evidence provided in Polish, when the Policy paragraph 3.3 says "communication shall be made in English", and furthermore by his own admission the Expert did not understand Polish.
- b) The Expert misjudged the evidence previously provided showing that the Respondent had copied the Complainant's figurative trade mark and website. He also overlooked evidence of the Respondent's bad character, demonstrated by its behaviour when opposing the Complainant's EU trade mark registration, and in particular by apparently inauthentic letters to the EUIPO supporting the Respondent's opposition.

## 7.2 Respondent

In his Response to the complaint, the Respondent denies the allegations against him. He claims to have used the word “gravity” for marketing weighted blankets earlier than the Complainant did, in fact from 2013 onwards, and supports this claim by copies of marketing materials and other documents from 2016 and February 2017.

Much of the Respondent's argument is couched in terms of seniority of trade mark registrations, with references to the different classes and geographic areas to which the parties' registrations apply, but with little comment on the Domain Name. In essence, he rebuts and reverses the Complainant's accusations, saying that the Complainant unlawfully copied from the Respondent rather than vice versa.

In his Response to the Appeal, the Respondent recites large parts of the Expert's arguments in favour of the Respondent's case, and in particular repeats these words from the Decision:

*“There is no evidence the Respondent's primary intention was to prevent the Complainant from registering the Domain Name or that the Respondent's intention was other than to sell weighted blankets. The evidence indicates the Respondent's intention to have been to sell product that it has been selling since at least as early as late 2016 and there is no evidence to suggest a primarily [sic] intention to disrupt the Complainant's business, other than by being a normal competitor.”*

## 8. Discussion and Findings

Like the Expert, the Panel will consider only those aspects of the parties' arguments and evidence that it finds relevant to the domain name dispute. Both parties have made much of their differences in relation to trade mark registration. Section 8.1 below clarifies the Panel's position on the limited relevance of the parallel disputes.

Separate sections below also provide detailed discussion on the two arguments raised in the Appeal Notice, namely the acceptability of much of the Respondent's evidence and the implications of the similarity between the parties' websites and logos. Following these discussions, the Panel provides its views on Rights and Abusive Registration in this case.

### 8.1 The broader dispute

The ongoing dispute between the US Complainant and the Polish Respondent is complex and multi-faceted. It has been and is being fought over a number of different fronts across different fora and territories: formal disputes have been submitted to the EUIPO and Amazon, and now also the DRS.

Yet the question "which party 'planted the flag' first?" does not receive one consistent answer across all fora and all territories. In essence the Respondent

claims earlier use, but the Complainant claims earlier trade mark and domain registrations. The position is as follows:

- The Respondent claims to have been the first to have put the mark GRAVITY to use in the course of trade in relation to weighted blankets. It claims to have done so in Poland, an EU Member State. By contrast the Complainant claims to have commenced its use in April 2017.
- The Respondent also claims to have been the first to remove the crossbar from the letter 'A' in its GRAVITY logo, in 2016. The Complainant removed the crossbar from the letter 'A' from the inception of its use in April 2017.
- The Respondent also claims to be the first to have sold its products through the Amazon.co.uk marketplace, in October 2017. It says that the Complainant did not do so until March 2018. The Complainant (misreading or mistyping the year) denies that its first sales were in March 2019, but the Complainant has not suggested an alternative date.
- The Complainant was the first to apply for trade mark registration of GRAVITY in relation to weighted blankets. It did so in the United States in January 2018.
- The Respondent was the first to apply for trade mark(s) featuring GRAVITY in relation to weighted blankets in the European Union. It did so in February 2018, prior to the publication of the Complainant's US application.
- The Complainant subsequently (in June 2018) applied for International trade marks under the Madrid system, designating the UK and EU and claiming priority from the earlier US filings. The claim to priority thus potentially leapfrogs the Respondent's February 2018 filing. As a result the Complainant and Respondent have respectively initiated cancellation and opposition proceedings in the EUIPO.
- The Complainant was the first to register its 'gravity' domain name: it registered gravityblankets.com in April 2017. The Respondent did not register the Domain Name in issue in this dispute, gravityblankets.co.uk, until October 2017.

From the above summary it can be seen that the present dispute is a serious and genuine multijurisdictional contest, bearing some superficial similarities to the long-running *Budejovicky Budvar Narodni Podnik v Anheuser-Busch Inc.* saga: 'Budweiser with blankets'.

## **8.2 Complex disputes under the DRS**

The DRS does not shy away from serious and complex disputes *per se*. DRS complaints in such cases cannot simply be rejected as 'out of scope', per the approach taken under the UDRP in *Love v. Barnett*, FA 944826 (NAF, 14.5.07). But it must be understood that such complaints are liable to encounter a number of challenges. Those challenges are articulated in past Appeal Decisions, including *DRS*

*04632 ireland.co.uk* and *DRS 16584 polo.co.uk*, and in the DRS Experts' Overview, from which the Panel derives the following principles:

First, DRS is a self-contained contractual dispute resolution service, operating according to its terms (as revised from time to time). It does not apply the same tests as a Court applying e.g. the law of registered trade mark infringement or passing off. It does not apply the same test as the UDRP. Therefore even if the DRS dispute is just one of several parallel disputes between the same parties, the Expert will not be unduly concerned with what is happening or has happened in another dispute forum, save to the extent that it sheds light on the tests laid down by the Policy. The only exception is where legal proceedings relating to the specific Domain Name in issue have been issued in a court of competent jurisdiction, in which case paragraphs 20.13 and 25 of the Policy come into play (if the Court is being asked to determine who should have the Domain Name, the DRS will stay its own proceedings and await the outcome).

Second, not all of the appointed DRS Experts are lawyers, let alone trade mark lawyers. Complainants cannot have a legitimate expectation of success if their complaint hinges on e.g. the interpretation of a complex legal instrument or the application of abstruse case law.

Third, the DRS is a speedy, inexpensive, efficient, paper-based dispute resolution system. There is no disclosure or discovery; there is no oral testimony or cross-examination; there is no such thing as 'contempt of DRS'. Where both sides advance a credible case substantiated by contemporaneous evidence, DRS Experts will frequently find themselves unable to reach definitive conclusions on primary conflicts of fact. The Experts will do their best on the papers to determine whether the burden and standard of proof has been met. Where serious allegations such as forgery or fraud are advanced, the substantiating evidence will need to be very cogent indeed.

Fourth, in cases involving genuine commercial disputes the burden of proof in relation to 'abusive registration' can be particularly difficult to discharge. According to the definition of that term in paragraph 1 of the Policy, the advantage or detriment is required to be 'unfair' and this is reinforced by the language of paragraph 8 ('genuine', 'legitimate', 'fair').

Fifth, the complainant bears the burden of proof and in cases which are too close to call the appropriate verdict under the Policy will be 'no action', thereby upholding the status quo. It is some consolation to know that an unsuccessful complainant will usually be able to pursue causes of action elsewhere, whereas an unsuccessful respondent may not.

### **8.3 Acceptability and relevance of evidence**

Since it is one of the two grounds for appeal, the Panel has given careful consideration to the question of whether DRS experts should admit evidence that is not in English, and makes the following points:



- The statement in the Policy requiring “communications” to be in English would naturally be interpreted as referring to communications between the parties and Nominet. It cannot refer to evidence that originated in a language other than English, as for reasons of authenticity this would properly be presented in the original language.
- It is however clearly in a party’s interest to provide translations into English of evidence it relies on that originated in another language, or at any rate of key passages or terms. Providing certified translations of evidential material is standard legal practice, which has been followed in a number of previous Nominet cases (for example DRS 4479 <champagne.co.uk> ).
- Nonetheless, the Panel agrees with the Expert that irrespective of language, the nature of a document can be clear from its general appearance, and that reasonable inferences can be drawn from pictures, layout and easily recognised parts like names and dates.
- The Panel also agrees with the Expert that it is not up to Nominet or Experts to obtain translations from other languages. However, it sees no difficulty with an Expert who happens to be familiar with the language of evidence making further inferences using his or her understanding of that language.

In the present case, the Panel has analysed all the evidence in some detail. In relation to the Respondent’s evidence, it makes the following points:

- The Response is supported by 11 Attachments, some of which consist of more than one document, making 28 documents in all. Twelve of these are in English and 16 are in Polish.
- The Panel agrees with the Complainant that crucial details are missing from many of the documents. In fact, it appears that in at least five of the documents, some pages are missing. In two cases, Attachments 1 and 10, only odd-numbered pages have been provided.
- It is the Panel’s impression that the deficiencies in the evidence result from lack of care rather than intent to mislead. The deficiencies appear to weaken the Respondent’s case.
- The Complainant itself has submitted some evidence in Polish, without translation (parts of its Attachment 10).
- There is a substantial Polish community within the UK and consequently Polish is widely understood in the UK (though not by any of the present Panel). As a result the Respondent could not have been surprised if a Polish speaker had seen his evidence. It would therefore have been unwise for him to use the Polish language with the intention of concealing anything. On the contrary, his assumption appears to be that his evidence in Polish will be understood.

- The Complainant says that the two documents in the Respondent's Attachment 5, which are apparently internal and external Amazon trader's sales lists, are too blurred to be legible. In fact, the Respondent has provided enlargements of important parts of these pages, which can be read.

Taking all these points together, the Panel cannot place any reliance upon large parts of the Respondent's evidence. However, the following pieces of evidence do appear to be relevant and to contain detail which enables them to support the Respondent's claims of early use of the word "gravity" in connection with bed covers:

- The first document in Attachment 2, which is a sales list in Polish showing dates between October and December 2016. The English word "Gravity" appears in the descriptions of many of the products sold, often alongside the Polish words "kołdra" or "kołderka", which both parties say mean some kind of bed cover. (The Panel attaches no importance to whether these words are translated as "blanket" or "quilt" – while the items in question are being referred to in English as "blankets", their pocketed construction appears to be like that of quilts).
- All four documents in Attachment 3, which although they are in Polish do attest to marketing activity by the Respondent, using the English word "gravity" in connection with bed covers, in the autumn of 2016 and from February 2017. The first and last of these are particularly clear.

In addition, the following pieces of evidence are relevant to the timing of the parties' trading on Amazon (thereby making their products available outside their home countries):

- The first document in Attachment 5, which is in English and supports the Respondent's claim of having traded on Amazon during October 2017.
- Attachment 10, which is in English, is part of a printout of the Complainant's Amazon web pages, showing "date first available" as 26/03/2018.

The Complainant's 15 Attachments to the Complaint and 4 Exhibits to the Reply are in English, apart from three of the five parts of Attachment 10, which as already mentioned are partly or wholly in Polish in support of the Complainant's claims about the history of the Respondent's company. All documents appear to be legible and to include the details which they are claimed to include. Of particular relevance for the Panel are Attachments 3 and 5, which support the Complainant's claims to have been using the term "gravityblankets" in marketing since April 2017, and Attachment 15, reproducing email correspondence between the parties on 21 May 2018.

#### **8.4 Similarity between the parties' websites and logos**

The Complainant claims that the Respondent copied the Complainant's website and logo. The Respondent denies this and reverses the accusation.

Attachment 3 to the Complaint is an extract from the Way Back Machine indicating that the Complainant's website has been in use since early 2017 and that the Respondent's website has been in use since late 2018.

Attachment 4 to the Complaint contains print-outs of the Complainant's and Respondent's respective websites. The opening page of each website shows a young woman sleeping under a blue weighted blanket. The Complainant's is overprinted "Better Rest To Get The Most Out Of Your Day" followed by sections about cognitive performance, emotional well-being and physical health. The Respondent's website has a different emphasis. It is overprinted "Comfortable during cold nights" followed by a section headed "Weighted blankets – what are they for?" with information on the purpose of relieving stress and anxiety. Likewise, the parties' Instagram pages copied in Attachment 7 to the Complaint are similar but not identical; the Respondent's contains four photos, all featuring young women, while the Complainant's has five photos, only two of which feature young women.

As regards the parties' respective logos, the Complainant's logo is the word GRAVITY with the letter A replaced with an inverted V. The Respondent's logo is the word GRAVITY with a horizontal line through it. The Complainant claims that it used its logo first, that the Respondent copied it and added the deletion line to give the same impression of the inverted V. The Respondent says that its logo was derived independently of and prior to the Complainant's in 2016.

In the Panel's view, there are some similarities (and also some differences) between the two websites. The evidence does indicate that the Complainant's website appeared first but, in the absence of further evidence, it does not follow that the Respondent has copied the Complainant's website. The Panel is not surprised that there are some similarities bearing in mind that the parties are competitors in the same market. The font in the Respondent's logo is similar to the font in the Complainant's logo but it is not identical. Indeed, the deletion line through the Respondent's logo makes it visually quite different from the Complainant's logo. Furthermore, there is no conclusive evidence as to which logo was used first. In the circumstances, the Panel is not persuaded that either of the parties has copied the other's website or logo.

## **8.5 Complainant's Rights**

The Complainant has demonstrated formal Rights in the word "gravity" through its trade mark registrations, even if these are disputed, and informal Rights since April 2017 in the compound "gravityblankets" through its Kickstarter campaign and website gravityblankets.com. It has met the low threshold requirement of showing that it is entitled to bring this Complaint.

## 8.6 Abusive Registration

The less straightforward question of Abusive Registration has two parts, initial registration and subsequent use. To succeed, the Complainant must show on the balance of probabilities that the Domain Name 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.

At the time of registration, in October 2017, the evidence shows that both parties were already trading in “gravity blankets” in their respective markets, and the Respondent was trading on Amazon. The Respondent may well have been aware of the existence of the Complainant and its website at gravityblankets.com, but as a genuine independent trader in similar articles, in the Panel’s view he was entitled to register the Domain Name. Paragraph 8.1.1.1 of the Policy allows as a Respondent’s defence that:

Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services.

It is clear that the Respondent was using the Domain Name in connection with a genuine offering of goods, and there is no evidence that he was aware of the Complainant’s cause for complaint before the correspondence between the parties on 21 May 2018.

The evidence of the parties' rival contentions to Amazon and to the EUIPO have not assisted the Panel on the issue of Abusive Registration. If the EUIPO has been misled by correspondence of dubious provenance then that is a matter which the EUIPO will no doubt take seriously, but it has no bearing on the issue of Abusive Registration. Under the Policy the Panel is not required to carry out a wide-ranging inquiry into the Respondent's morality - rather the Panel is concerned with determining the (un)fairness of any advantage or detriment occasioned by the registration or use of the Domain Name.

The Complainant’s case that subsequent use of the Domain Name took unfair advantage of the Complainant’s Rights hinges on its claim that the Respondent copied the Complainant’s website and logo. The Respondent has denied copying, and reversed the accusation. As has been discussed in Section 8.4 above, the Panel, like the Expert, is not persuaded that copying by either party has been proven on the evidence. In the judgement of the Panel, the materials in question are similar, but no more so than might be expected given that the parties are selling similar products

using similar media which reflect the same internet trends. The Complainant has not demonstrated that the Respondent's use of the Domain Name has capitalised on the Complainant's success or otherwise overstepped the boundaries of fair competition.

The Complainant's case that subsequent use of the Domain Name was unfairly detrimental to the Complainant's Rights is supported only by the evidence of actual confusion. Again like the Expert, the Panel is not surprised at customer confusion arising between similar products which are similarly presented on similarly named websites; indeed, an absence of confusion would have been more surprising. The Panel agrees with the Expert that there is no reason to attribute the confusion more to one party than to the other; it is simply the likely consequence of two businesses independently coining the same name in relation to similar products and expanding into common markets. In any case, the Complainant has not shown actual detriment to its business, and should there have been any, it could not be said to be unfair.

### **8.7 Earlier cases**

Finally, the Panel has considered the following earlier court and DRS cases cited by the Complainant in support of its complaint:

- The 2007 Court of Appeal case of *Phones 4U Ltd v Phone 4u.co.uk Internet Ltd*. This concerned an action for passing off, an issue which it has not been necessary for the Panel to assess in this case.
- DRS 06973 (*veluxblind.co.uk*), DRS 04912 (*4inkjet.co.uk*) and DRS 02087 (*starbuckscoffee.co.uk*). The Complainant submitted that these cases support its claim that the Domain Name is identical or highly similar to the Complainant's mark in which it has Rights and that the Respondent has taken unfair advantage of those Rights. The Panel accepts that the names are similar but, as mentioned above, the Complainant has not demonstrated that the Respondent has taken unfair advantage of the Complainant's Rights.
- DRS 04331 (*verbatim.co.uk*) and DRS 0766 (*whistleblower.co.uk*), which support the view (not universally held) that abusiveness requires morally reprehensible behaviour on the part of a respondent. The Complainant submits that the Respondent's pattern of behaviour demonstrates such behaviour. The Panel has already commented on the parties' rival contentions to Amazon and to the EUIPO which have not assisted the Panel on the question of abusiveness.
- DRS 0223 (*itunes.co.uk*) in support of the Complainant's claim that the Respondent has unfairly disrupted its business and the 2010 High Court case of *Och-Ziff Management Europe Ltd v Och Capital LLP* and DRS 15788 (*starwars.co.uk*) regarding the claim of initial interest confusion. The Panel has not found any evidence that the Respondent's use of the Domain Name has disrupted the Complainant's business. Whilst initial interest confusion can lead to a finding of Abusive Registration, the Panel has not found that any confusion in this case can be attributed more to one party than the other.

- DRS 07991 (toshiba-laptop-battery.co.uk) in which an Appeal Panel regarded a respondent's use of a domain name featuring a complainant's trademark to sell competing goods to be indicative of abusiveness. The Panel notes that this is not applicable in this case in which both the Complainant and the Respondent have Rights in the word "gravity".
- DRS00658 (chivasbrothers.co.uk), which established that abusiveness can be reasonably inferred if a) the domain name is identical to the name in which the complainant has Rights, b) that name is exclusively referable to the complainant, c) there is no obvious justification for the respondent having adopted that name and d) the respondent has not given any explanation for having selected the domain name. The Panel agrees with the Expert that the case of DRS00658 is distinguished in that the name "gravity" is not exclusively referable to the Complainant.

In summary , the Panel does not consider that any of the above cases assist the Complainant's claims.

## **9. Decision**

The Panel upholds the original Decision, and dismisses the Appeal.

**Signed: Claire Milne**

**Dated: 9 June 2020**

**Signed: David King**

**Dated: 9 June 2020**

**Signed: Philip Roberts**

**Dated: 9 June 2020**