

DISPUTE RESOLUTION SERVICE

D00022409

Decision of Independent Expert

Pet Plan Limited

and

Fundacion Comercio Electronico

1. The Parties:

Complainant: Pet Plan Limited

57 Ladymead

Guildford

Surrey

GU1 1DB

United Kingdom

Respondent: Fundacion Comercio Electronico

Calle 74 y Ave.

Panama City

Panama

2. The Domain Name:

petplannet.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 they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

02 March 2020 06:36 Dispute received

04 March 2020 12:57 Complaint validated

04 March 2020 13:05 Notification of complaint sent to parties

23 March 2020 01:30 Response reminder sent
26 March 2020 09:17 No Response Received
26 March 2020 09:18 Notification of no response sent to parties
31 March 2020 10:35 Expert decision payment received

4. Factual Background

The Complainant is the owner of the trade mark PETPLAN registered, inter alia, in the UK in a stylised form as of 1996 and as an ordinary word mark as of 2000 for insurance services.

The Domain Name registered in 2019 has been offered for sale for \$999 and was initially used to point to pay per click links to third party businesses including competitors of the Complainant. Since the Complainant sent a cease and desist letter to the Respondent the Domain Name has been pointed to a site authorised by the Complainant to offer insurance services.

5. Parties' Contentions

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the trade mark PETPLAN registered, inter alia, in the UK in a stylised form as of 1996 and as an ordinary word mark as of 2000 for insurance services.

The Domain Name registered in 2019 is similar to the Complainant's mark containing it in its entirety, adding only the generic word 'net' and the ccTLD .co.uk which do not prevent such similarity.

The Domain Name is an Abusive Registration and the Respondent does not have a legitimate reason to register the Domain Name, is not commonly known by it, is not authorised by the Complainant and has no rights in PETPLAN as a trade mark. Respondent specifically registered the Domain Name and used it to ride on Complainant's rights taking undue advantage and causing detriment.

The Domain Name is currently pointed to a site authorised by the Complainant to offer insurance services. Prior to receiving the Complainant's cease and desist letter the Respondent was pointing the Domain Name to pay per click links including to competitors of the Complainant. Such behaviour is likely to cause confusion on the Internet as to the ownership of the site attached to the Domain Name and any third party services offered on it.

The Domain Name has been offered for sale for \$999 a sum in excess of out of pocket costs of registration.

The Respondent did not reply to a cease and desist letter from the Complainant.

The Respondent has registered or otherwise acquired the Domain Name primarily:

i) 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;

ii) as a blocking registration against a name or mark in which the Complainant has Rights; and

iii)for the purpose of unfairly disrupting the business of the Complainant.

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.

The Respondent did not respond to the Complaint.

6. Discussions and Findings

Identical or Similar

The Complainant's PETPLAN mark is registered, inter alia, as a stylised word trade mark as of 1996 and as an ordinary word trade mark as of 2000 in the UK for insurance services.

The suffix .co.uk in the Domain Name does not serve to prevent similarity between the Complainant's PETPLAN mark and the Domain Name as .co.uk has a generic meaning and is a functional part of a domain name, not a part of any trade mark involved in these proceedings.

The addition of the generic word 'net' to the Complainant's mark in the third level of the Domain Name does not prevent similarity between the Domain Name and the Complainant's mark.

The Domain Name is therefore similar to a mark in which the Complainant has rights under the Policy.

Abusive Registration

This leaves the second limb. Is the Domain Name, in the hands of the Respondent, an Abusive Registration? Paragraph 1 of the Policy defines "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. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 5 of the Policy. There being no suggestion that the Domain Name is an exact match to the Complainant's mark or that the Respondent has given false contact details, has a pattern of registrations or has a relationship with the Complainant, the only potentially relevant 'factors' in paragraph 5 are to be found in subparagraph 5.1.1 and 5.1.2 which read 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;'

The Domain Name has been offered for sale for \$999 a sum in excess of usual out of pocket expenses for registration of a domain name. Accordingly, on the balance of probabilities the Expert finds that the Respondent registered the Domain Name 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.

Further the Domain Name has been pointed to pay per click links to third party businesses including confusingly to those of competitors of the Complainant and, following the receipt of a cease and desist letter from the Complainant, to a site authorised by the Complainant to offer insurance services. Accordingly the Expert also finds 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.

7. Decision

The Domain Name 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 and has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Expert determines that the Domain Name shall be transferred to the Complainant.

Signed

Dated