

DISPUTE RESOLUTION SERVICE

D00023060

Decision of Independent Expert

Bloomberg Three L.P

and

James Allen

1. The Parties:

Complainant: Bloomberg Three L.P
731 Lexington Avenue
New York
United States

Respondent: James Allen
Manchester
United Kingdom

2. The Domain Name:

bloomberg-trading.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 October 2020 18:06 Dispute received
05 October 2020 10:37 Complaint validated
05 October 2020 10:41 Notification of complaint sent to parties
22 October 2020 02:30 Response reminder sent
27 October 2020 11:34 No Response Received
27 October 2020 11:34 Notification of no response sent to parties
04 November 2020 15:13 Expert decision payment received

4. Factual Background

The Complainant is the owner of the trade mark BLOOMBERG registered, inter alia, in the UK for financial services since 1997.

The Domain Name registered in 2020 has been used for a competing financial services site and the site has been named as a clone site by regulatory authorities.

5. Parties' Contentions

The Complainant's contentions can be summarised as follows:

The Complainant is the owner of the trade mark BLOOMBERG registered, inter alia, in the UK for financial services since 1997.

The Domain Name registered in 2020 is similar to the Complainant's trade mark registration.

The Domain Name is abusive because it:

- Aims to confuse internet users looking for the Complainant's website
- Aims to prevent the Complainant from acquiring the Domain Name
- Aims to gain unfair commercial advantage from Complainant's reputation
- Aims to disrupt the Complainant's business
- Infringes on the Complainant's registered UK to EU trade marks

The various financial services offered under the website attached to the Domain Name are identical or substantially similar to the services offered by the Complainant under its BLOOMBERG brand. Since the services shown at this domain and those offered by the Complainant are aimed at the same consumers, there is a significant likelihood of confusion on the part of the public. That is to say, people will believe that the businesses are connected with or controlled or authorised by the Complainant when they are not.

In fact, there have already been numerous instances of consumer confusion. Consumers have completed transactions with bloomberg-trading.co.uk whilst under the impression that they were the Complainant or were associated with the Complainant.

The confusion caused by the Domain Name has been compounded by the fact that there exists an authorised affiliate of the Complainant who uses the Bloomberg name and has been trading under the name Bloomberg Trading Facility BV (based in the Netherlands). The Complainant announced that this affiliate had been approved by the Netherlands Authority for Financial Services in January 2019 via its website. The Domain Name was registered subsequently in May 2020. The web site attached to the Domain Name has been named as a clone of the Complainant's Bloomberg Trading Dutch company by regulatory authorities.

6. Discussions and Findings

Identical or Similar

The Complainant's BLOOMBERG mark is registered as a trade mark, inter alia, in the UK for financial services and has been so registered since 1997.

The suffix .co.uk in the Domain Name does not serve to distinguish it from the Complainant's BLOOMBERG mark 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.

A hyphen as a form of punctuation does not prevent the Domain Name from being similar to the Complainant's mark. Nor does the generic word 'trading'.

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 Respondent has offered to sell the Domain Name, 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, 5.5.2 and 5.1.6 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 [intentionally omitted]

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;"

and

"5.1.6 The Domain Name is an exact match .. for the name or mark in which the Complainant has rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name'.

In the opinion of the Expert the web site attached to the Domain Name is confusing. It suggests a thirty year history when the Domain Name was only registered this year which is likely to confuse people that the site attached to the Domain Name is affiliated with the

Complainant's group of companies which has been known as BLOOMBERG for decades. The Expert notes the list of actual instances of confusion presented by the Complainant in a schedule, although unfortunately there was no actual documentary evidence included of confusing communications using the Domain Name. It was persuasive, however, that regulatory authorities had named the site attached to the Domain Name as a clone site and unsafe. Clone suggests an exact copy and, therefore, necessarily confusing.

The Domain Name is also arguably an exact match to BLOOMBERG TRADING a mark that the Complainant appears to have a reputation in, at least in the Netherlands, and there is no proof that the Respondent, who did not respond to the Complaint, has reasonable justification for registration of the Domain Name.

The Expert also believes that the Domain Name is also a blocking registration and unfairly disrupts the Complainant's business.

Accordingly the Expert holds that on consideration of all the evidence the Complainant has shown on the balance of probabilities that the Domain Name was registered or otherwise acquired and has been used in a manner that took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

Accordingly, the Expert finds that the Complainant has adduced sufficient evidence to show that on the balance of probabilities the Domain Name is an Abusive Registration.

7. Decision

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

Signed: Dawn Osborne

Dated 28/11/2020