

## DISPUTE RESOLUTION SERVICE

D00008781

### Decision of Independent Expert

Koninklijke Philips Electronics N.V.

and

E A Dent

#### 1. The Parties:

Complainant: Koninklijke Philips Electronics N.V.  
Groenewoudseweg 1  
EINDHOVEN  
NL-5621 BA  
Netherlands

Respondent: E A Dent  
352 Psalter Lane  
Sheffield  
S Yorkshire  
S11 8UW  
United Kingdom

#### 2. The Domain Name:

2.1 The domain name in dispute in these proceedings is <philips-ambilight.co.uk> (the "Domain Name").

#### 3. Procedural History:

3.1 The Complaint entered Nominet's system on 6 July 2010. The Complaint was validated under Nominet's dispute resolution service policy (the "Policy") and sent to the Respondent the same day.

3.2 The letter enclosing a copy of the Complaint informed the Respondent that it should file any Response by no later than 27 July 2010 but no Response was filed.

3.3 Mediation not being possible and the Complainant having paid the relevant fee, the Complaint was referred to me. I confirmed that I was not aware of any reason why I could not act as an Independent Expert in this case and I was appointed as such by letter dated 29 July 2010.

#### **4. Factual Background**

4.1 The Complainant is the well known multinational electronics corporation based in the Netherlands. “Philips” is its “master brand” but it also sells products under additional brand names.

4.2 One of these additional names is “Ambilight”, which the Complainant uses in connection with the sale of certain television screens. “Ambilight” televisions generate a light effect around the screen that corresponds to the video content being shown. Approximately three and half million units of “Ambilight” screens have been or are likely to be sold in 2010.

4.3 The Complainant is the owner of various trade marks around the world that incorporate or comprise the word “Philips”. These include:

- (i) Community Trade Mark No 205971 for the word mark PHILIPS in numerous classes, including class 9, registered 22 October 1999; and
- (ii) United Kingdom registered trade mark no. 927851 for the word mark PHILIPS in class 9 registered 10 July 1968.

4.4 The Complainant also is the owner of International (i.e. Madrid system) trade mark no 869863 dated 2 March 2005 that takes the following form:



The designations for this mark include the European Community.

4.5 The Respondent appears to be an individual in Yorkshire. He registered the Domain Name on 17 March 2007. At the time of this Complaint he claimed the Nominet WhoIs “non-trading individual” exemption so that his address did not appear in the WhoIs details made publicly available for the Domain Name by Nominet.

4.6 The exact contents of the website or websites that have operated from the Domain Name since its registration is unclear. However, at least recently the web page operating from the url <http://philips-ambilight.co.uk/privacy.php> took the form of a “privacy page”. This page in addition to displaying a “privacy policy” also displayed a banner at the top that reproduced the PHILIPS mark and a photograph which appears to include (albeit seen from a distance) an “Ambilight” product.

4.7 The Respondent is the owner of various other domain names. These appear to reproduce the marks of third parties. These domain names include:

- fisherpricechristmas.co.uk
- nintendo-ds-lite-pink.co.uk
- pink-nintendo-ds-lite.co.uk
- sony-cameras-digital.co.uk
- tomtom-satnav.co.uk
- transformersbumblebee.co.uk
- transformersoptimusprime.co.uk

4.8 The Respondent is also the owner of domain names that would appear to reproduce the model names of various television and other electronic products produced by third parties. They include:

- kdl32s2530.co.uk
- kdl40d3500.co.uk
- le26r74bdx.co.uk

## 5. Parties' Contentions

5.1 The Complainant contends that the Domain Name is identical or at any rate confusingly similar to its registered trade marks being no more than a combination of its PHILIPS and AMBILIGHT marks.

5.2 The Complainant claims that the Respondent has no registered rights in the terms embodied in the Domain Names, knows of no facts or circumstances under which the Respondent could boast a valid right or legitimate interest in the Domain Name.

5.3 It claims that the Respondent is using the Domain Name in a way which has confused or is likely to confuse people or business into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. It also contends that the registration is part of a pattern of registrations which correspond to well known names or trade marks in which the Respondent has no apparent rights. It also claims that the Respondent has given incorrect registration details, which is said to indicate abusive registration.

5.4 In the circumstances the Complainant concludes that "the [Domain Name] was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration either to Complainant or to a competitor of Complainant or another third party for valuable consideration in excess of Respondent's out-of-pocket costs directly related to the domain name".

5.5 As has already been recorded earlier in this decision, the Respondent has not filed any Response.

## 6. Discussions and Findings

### General

6.1 To succeed under the Policy, the Complainant must prove on the balance of probabilities, first, that it has Rights in respect of a "name or mark" that is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2(a)(ii) of the Policy). The Complainants must prove to the Expert that both elements are present on the balance of probabilities (paragraph 2(b) of the Policy).

6.2 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

*"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) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant 's Rights."*

6.3 The failure by the Respondent to file a substantive submission in response to the Complaint does not entitle the Complainant to the equivalent of a default judgment on these issues. The Complainant still has to make out its case on the balance of probabilities under the Policy to obtain the decision it wants. However, in the absence of any exceptional circumstances I am entitled to draw such inferences from the Respondent's non-compliance with the Policy or the procedure for the conduct of proceedings under the Policy (the "Procedure") as I consider appropriate (paragraph 15(c) of the Procedure).

#### Complainants' Rights

6.4 The Domain Name is clearly the words "philips" and "ambilight" combined with the "co.uk" suffix. I accept that the Complainant is owner of trade marks that comprise the word Philips alone. I also accept that the Complainant is the owner of an international registration with effect in a number of territories which comprises a device of which the word "Ambilight" is a prominent part and the only textual element.

6.5 In the circumstances I have little difficulty in concluding that the Domain Name is similar to both of the Complainant's PHILIPS and AMBILIGHT marks and that the Complainant has satisfied the requirements of paragraph 2(a)(i) of the Policy

#### Abusive Registration

6.6 I also have little doubt that the Domain Name is an abusive registration. The Domain Name can only be sensibly read as a combination of two of the Complainant's marks. In the circumstances, it is clear that the Domain Name was registered with the Complainant's marks in mind.

6.7 The exact intentions of the Respondent in this case are not clear and matters are not helped by the fact that the Complainant has given a less than full description

of the way in which the Domain Name has been used since registration. Nevertheless, I accept that the most likely explanation for the registration is that the Respondent has sought to take advantage of the reputation of the Complainant's mark to draw internet users who thought that the Domain Name was operated by, or otherwise officially associated with, the trade mark owner to the registrant's website; i.e. to take advantage of "initial interest confusion".

- 6.8 The Complainant goes further and contends that the use of its marks on the website operating from the Domain Name is such that those who reach the website may think that it is connected with the Complainant. In the absence of a fuller description of that website it is difficult to determine whether or not this is the case. However, in my opinion it does not matter. Registration and use of a domain name with the intent of taking advantage of "initial interest confusion" of the sort I have described is sufficient for the registration to be abusive under the Policy even if when the internet user reaches the website it becomes clear that it was operated by some "unauthorised" entity (see *Björn Borg Brands AB v T'imarco* DRS 6806 and its discussion of the Appeal Panel decisions in *Seiko UK Limited v Wanderweb* DRS 00248 and *Hanna-Barbera Productions, Inc -v-Graeme Hay* DRS 00389).
- 6.9 There are also further factors in this case that suggest abusive registration. Although I express no view on the Respondent's registration of equipment model numbers as domain names, it seems clear that the Respondent has otherwise registered domain names that incorporate the marks or names of others. Those marks or names include "Fisherprice", "Nintendo", "Sony" and "TomTom". I accept that the present registration forms part of that pattern of registration and that this is therefore a case that falls within the scope of 3(a)(iii) of the Policy.
- 6.10 There is also the fact that the Respondent has sought to take advantage of the "non-trading individual" exemption in relation to this registration in circumstances where regardless of exactly how the Domain Name is being used, it would appear to be being used for some commercial purpose. To have claimed that exemption where it does not apply is likely to amount to a misrepresentation to Nominet. An obvious inference in such a case is that the registrant is trying to disguise his identity for reasons that are not justified by legitimate privacy concerns. It is another factor that is relevant to the overall assessment of abusive registration in this case.
- 6.11 In the circumstances, the Complainant has satisfied the requirements of paragraph 2(a)(ii) of the Policy

## **7. Decision**

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

**Signed Matthew Harris**

**Dated 4 August 2010**