

DISPUTE RESOLUTION SERVICE

D00012695

**Decision of Independent Expert
(Summary Decision)**

Friendly Robotics

and

Mr Donald Wilson

1. The Parties:

Lead Complainant: Friendly Robotics
Friendly Robotics
Pardesia Industrial Zone
PO Box 1412
Pardesiya
42815
Israel

Respondent: Mr Donald Wilson
5, Grange Road
Birmingham
B24 0DG
United Kingdom

2. The Domain Name(s):

friendlyrobotics.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes No

4. Rights

The complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain name.

Yes No

5. Abusive Registration

The complainant has, to my reasonable satisfaction, shown that the domain name friendlyrobotics.co.uk is an Abusive Registration

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes No

7. Comments (optional)

There is no doubt that the Complainant has Rights in the name or mark FRIENDLY ROBOTICS. It has provided details of a US and an EU registered trade mark and there is also some evidence of trading under this name.

The question of whether the Domain Name is an Abusive Registration is more difficult particularly as there is not much detail in the Complaint about this. To decide that the Domain Name is an Abusive Registration I must be satisfied on the balance of probabilities i.e. it is more likely than not. The burden of proof here is on the Complainant.

Nominet Experts are widely agreed that when determining Abusive Registration the fundamental question is one of knowledge. I must be satisfied, on the balance of probabilities, that the Respondent, at some level, had the name or mark in which the Complainant has Rights in mind when it registered or otherwise used the Domain Name. See for example the decision of the Appeal Panel in Verbatim Limited v Michael Toth DRS04331.

There will of course be cases where the Complainant's name or mark is so famous that it is clear that the Respondent must have known about it. In those cases the

Complainant need not do much more and its case really speaks for itself. There will however be other cases where the fame of the Complainant's name or mark is not so obvious and in those cases the Complainant will need to demonstrate how well known its name or mark is and therefore why the Respondent must have known about it (and why the Respondent's conduct takes unfair advantage of or is unfairly detrimental to the Complainant's Rights).

This case falls into the second category. It is therefore for the Complainant to demonstrate how well known its name or mark is. In my view the Complainant has simply failed to do this. I would have expected to see things such as details of sales and/or marketing figures, details of where the Complainant sells its products and examples of press coverage and advertising. There is nothing like that in the Complaint and all I have seen is some pages from Wikipedia (which are referred to in the Complaint) which provide some basic details about the Complainant but which do not assist me very much.

I therefore do not think that based on what I have seen that the Complainant has proved its case and I therefore cannot make a finding of Abusive Registration.

I would add that the Respondent does appear to me to be operating a legitimate business from the Domain Name. It is using the Domain Name to sell robot themed computer games which is of course subtly different the Complainant's business which is autonomous vacuum cleaners and lawn mowers. I cannot see any suggestion from that site alone that the Respondent is taking unfair advantage or causing unfair detriment to the Complainant's Rights.

8. Decision

Transfer	<input type="checkbox"/>	No action	<input checked="" type="checkbox"/>
Cancellation	<input type="checkbox"/>	Suspension	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>		

.....
.....
.....
.....
.....

Signed: Nick Phillips

Dated: 3rd June 2013