

# **DISPUTE RESOLUTION SERVICE**

**D00018334**

## **Decision of Independent Expert**

**Booking Live Software Ltd**

and

**Paul Murphy**

### **The Parties**

Complainant: Booking Live Software Ltd  
Suite 231 179 Whiteladies Road, Clifton,  
Bristol  
BS8 2AG  
United Kingdom

Respondent: Paul Murphy  
68 Capel Avenue, Peacehaven  
Peacehaven  
West Sussex  
BN10 8HD  
United Kingdom

### **The Domain Name**

bookinglivesoftware.co.uk

## **Procedural History**

1. 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.
2. The following is a summary of the procedural steps in this case, -

21 December 2016	Complaint received by Nominet.
28 December 2016	Notification of complaint sent to the parties.
13 January 2017	Response reminder sent.
17 January 2017	Response received and notification of response sent to the parties.
20 January 2017	Reply reminder sent.
24 January 2017	Reply received and mediator appointed.
27 January 2017	Mediation started.
02 March 2017	Mediation failed.
07 March 2017	Expert decision payment received.
10 March 2017	Expert appointed.

## **Factual Background**

3. The Complainant ('BLSL') carries on business in (among other things) the supply of software to manage bookings and schedule availability in a range of commercial and other settings. The Respondent registered the Domain Name on 10 July 2014 against the background of a contractual dispute between Adventure Connections Ltd. ('ACL') and Booking Live Ltd. ('BLL') relating to the supply of specified software services. BLSL now carries on the business formerly carried on by BLL, which was placed in liquidation.

4. The Respondent has been using the Domain Name to operate a website that makes wide-ranging criticisms arising out of that dispute.

### **Parties' Contentions**

5. The Complaint alleges, -
  - 5.1 BLSL was incorporated on 25 April 2014 and provides its software-related services under the trade name Booking Live. Its online activities are conducted from its website at <https://www.bookinglive.com>.
  - 5.2 BLSL was incorporated as part of a corporate restructuring of BLL, which had been incorporated on 22 August 2007 and dissolved on 5 November 2015. The name 'Booking Live Software' has been used for a significant period and to a significant degree. Immediately following the incorporation of BLSL, the Complainant acquired the goodwill of BLL.
  - 5.3 The name of the Domain Name is almost identical to BLSL's trade name Booking Live, which is recognised by the purchasing trade and purchasing public as indicating the services provided by BLSL.
  - 5.4 BLSL owns UK registered trade mark no: UK00002628944, in the form of a logo consisting of a stylised depiction of the word 'bookinglive'.
  - 5.5 The Domain Name was registered by the Respondent on 10 July 2014, in order to disrupt the business of BLSL.
  - 5.6 The Domain Name is being used to host a website which displays BLSL's trade mark prominently and contains statements defamatory of BLSL, which are designed to deter potential customers from purchasing its services. These have included the following, -

*'Inept, here are some facts. The original Booking Live Ltd. is in liquidation and they are currently trading as [BLSL]. [H]owever they neglected to secure the URL Booking live Software.co.uk and .com. How inept can you be? A software company that does not secure their own web address!!!*

.....

*'Delusional, inept and fraudulent .....*

*There's many booking systems and website developers details available on the internet, but if you choose [BLSL] then you have been warned and deserve everything you get!'*

- 5.7 The Domain Name was registered to confuse people into believing it is controlled by the Complainant. The use of BLSL's registered corporate name clearly represented an attempt to deceive and to entice potential customers of BLSL into visiting the site.
- 5.8 The Respondent's website is not a legitimate criticism site in view of the choice of name. Had the website been named 'bookinglivesoftware-criticism.co.uk' for example, any speculative visitor would have been hard-pressed to mistake it for the Complainant's own website. As the Domain Name comprises only the Complainant's corporate name, its use by the Respondent is a deliberate ploy to entice potential customers of BLSL even though it may be clear immediately once the visitor lands on the site that it is not actually connected with BLSL: see previous decisions under the DRS, e.g. chivasbrothers.co.uk DRS 00658.
- 5.9 BLL and the Respondent's company (ACL) signed a contract on 26 April 2012 for the provision of an online booking system. A deposit (of £19,000) equal to 50% of the contract price was paid to BLL by ACL. In late 2012, BLL provided a revised price to carry out additional work necessary to perform the contract. ACL expressed a desire to cancel the contract due to the increase in cost. BLL agreed to that, but retained the deposit to cover the cost of work already carried out under the contract.

5.10 On 10 July 2014, the website was registered by the Respondent and all subsequent attempts to settle the dispute (including transfer of the Domain Name) have been unsuccessful.

6. The Response alleges, -

6.1 The Respondent prefers not to re-engage a legal representative at present, but is prepared to do so if necessary. He will supply all such documents as are necessary to 'support and counteract any claim.'

6.2 The Complainant's allegation that the change of name from BLL to BLSL was a renaming process is a lie. As the Complainant has stated, BLL was dissolved and this was due to the failure of that business, so 'eliminating any promises and contracts' made by the company.

6.3 The truth is that the name Booking Live Software has only been used since BLL was dissolved in November 2015.

6.4 The trade name and URL Booking Live are associated with a dissolved company and has no relevance to Booking Live Software, unless the Complainant intends to deceive actual clients and potential clients with the use of that trade name.

6.5 The current website 'bookinglivesoftware.co.uk' was registered as an educational site, informing readers of its content. It provides only information and is a review website.

6.6 'Regarding the content, this was considered to reflect Booklive, this website URL and company is now dissolved, once again the complainant is trading with the url of a dissolved company.'

6.7 Without engaging additional legal representation, the Respondent states that he is unsure how a dissolved company can ply their trade on a URL by a dissolved company.

6.8 'Regarding the labelling, this was used to review Booking Live (now dissolved). These are accurate to the level of service delivered by Booking Live.'

6.9 The fact that a company did not register a specific URL does demonstrate a lack of business competence. And is it not 'holistically shameful' for a digital company not to register its intended URL?

6.10 The background to the dispute over the Domain Name is to be found in the letter of 13 March 2013 to BLL from solicitors acting for ACL. As set out in that letter, that company's contract with BLL was terminated by ACL on the grounds of BLL's breaches of the contract, which resulted in very substantial financial losses to ACL. Those breaches resulted from numerous broken promises and assurances on the part of the company and its representatives. To make matters even worse, BLL 'actively sought to profit further from the dreadful position' in which it placed ACL.

6.11 The director of BLL has started three companies and dissolved three companies. He was behind BLL, which registered a URL, traded without the intention of fulfilling the contracts that company entered into and was then liquidated and dissolved only to start the very next day on yet another URL. This is reprehensible and 'clearly this will continue unless authorities stop the abuse of the internet.'

6.12 The Response refers to the contents of the website, <http://www.bookinglivesoftware.co.uk>.

7. The Reply alleges, -

7.1 The Respondent's website is not educational and it is not a review site. The Complainant repeats the grounds of abusive registration set out in the Complaint.

- 7.2 It is denied that there has been any abuse of the internet. BLSL's acquisition of the assets and goodwill of BLL was entirely lawful. As evidence of these matters, the Complainant refers to the order of 29 November 2016 made by District Judge Shorthose in case no: 8321 of 2016, *Adam Vincent Morgan v The Secretary of State for Business, Energy and Industrial Strategy*, which gave Mr Morgan permission under section 216(3), Insolvency Act 1986 to be or continue to be a director of BLSL and to be concerned with and/or take part in the promotion, formation and management of BLSL trading as 'Booking Live' and/or 'Booking Live Software.'
- 7.3 The Respondent has failed to submit any supporting evidence as it is required to do by paragraph 7.3.2 of the current DRS Policy ('the Policy') and has failed to demonstrate any substantive criteria to show that the registration is not abusive. These fundamental shortcomings in the Response show a lack of factual substance and seriousness in the Respondent's position.
8. On 15 March 2017 Nominet forwarded to me an application from the Respondent seeking permission to provide a further statement. Having considered the explanatory paragraph, I considered the full statement and decided to that it was appropriate to allow the Respondent to rely on it under paragraph 17 of the Policy. On 15 March 2017, I directed that the Complainant be given until 10.00 a.m. on 21 March 2017 to put in any responsive statement and documents relied on. On 20 March 2017, the Complainant served a further statement with two supporting annexes, one of which consisted of further pages from the Respondent's website at <http://www.bookinglivesoftware.co.uk>.
9. The Respondent's further statement included the following points, -
- 9.1 No evidence has been provided as to how the Complainant has acquired the goodwill of BLL. Neither has any evidence been submitted as to the Complainant's own turnover under the brand. Accordingly, there is no

evidence before the Expert as to the existence or extent of the Complainant's goodwill in this name.

- 9.2 There is no 'goodwill' in the name BookingLive in the market. The Respondent's experience of BLL is outlined in his lawyer's letter of claim to that company dated 13 March 2013, a copy of which was attached to the Response. The Respondent suffered significant loss at the hands of an entirely incompetent and dishonest company and could obtain no remedy as a result of the company going into liquidation shortly after this dispute arose.
- 9.3 The trade mark was filed on 25 April 2012 in the name of the owner "BookingLive". At this point in time, it was BLL (at that time called Mango Creative Studio Limited) that was trading under this brand. The Complainant was only incorporated in April 2014 and, accordingly, the Complainant could only effectively own this trade mark now if BLL had assigned the mark to it. No such assignment has been produced by the Complainant. Furthermore, the IPO has provided information that a form TM21A was filed May 2015 to update the owner's name. This is only the correct form to use if the owner has simply changed its name. BLL was dissolved on 24 February 2015 and could not have filed this application. For the Complainant to own the trade mark validly, it should have filed a TM16 application to record a change of ownership (if indeed there had been an assignment), which it has not. Therefore, it is contended that the Complainant cannot be the valid owner of this registered trade mark. It appears to have incorrectly assumed ownership of it by claiming to the Intellectual Property Office (IPO) that the original owner from 2012 had changed its name to BLSL, which cannot be true.
- 9.4 Any reference made by the Respondent using the Domain Name to the software of BookingLive is a reference to the software products and services of BLL, which has been dissolved and is unable to make a complaint against the Respondent under the DRS.



- 9.5 If the Complainant has latterly sought to assume the goodwill and trading position of BLL, it does so at its own risk in relation to the bad will in the market, not least amongst the many disgruntled customers and creditors that it left high and dry when it went insolvent. The Complainant should not be entitled to accuse legitimate and aggrieved former customers of an entirely different company of abusively registering domain names that the Complainant now wishes to use to trade in the place of the insolvent company. It has stepped into the shoes of a highly unpopular business and any ramifications of that are the result of its decision to do that.
10. In the Complainant's response to the Respondent's further statement, BLSL alleged as follows, -
- 10.1 The assets of BLL (CN: 06350326), including its goodwill, were acquired by BLSL (CN: 09012100) by means of an asset purchase agreement. Due to the confidential nature of this agreement (and irrelevance to the matter at hand), it was not submitted as evidence to support the Complainant's case.
- 10.2 The Claimant's UK trade mark (UK00002618944) was correctly transferred from BLL to BLSL both legally and administratively. The trade mark was purchased by the Complainant and the IPO was correctly notified of this acquisition on 13 May 2015. This is clearly visible on the [trade mark case history page \(https://www.ipo.gov.uk/tmcase/History/1/UK00002618944\)](https://www.ipo.gov.uk/tmcase/History/1/UK00002618944), as demonstrated by the unique ID numbers for BLL (63834) and BLSL (404154). There is no substance to the Respondent's statement regarding the validity of the Complainant's ownership of the trade mark.
- 10.3 The content of the website is not limited to criticism of BLL and also makes adverse criticisms of BLSL.

10.4 The legitimacy of the content published through the disputed domain is of no relevance to this complaint. As outlined in the initial complaint, the Respondent's intention together with the confusion caused by the registration determine the question of abusive registration. The Respondent has recently updated the website, which could be interpreted as an attempt to disguise the initial intent behind its creation; as set out in the accompanying extracts from the website.

## **Discussion and Findings**

11. A Complainant is required under subparagraphs 2.1 and 2.2 of the Policy to prove on the balance of probabilities that the following two elements are present, namely: -

11.1 he has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

11.2 the Domain Name, in the hands of the Respondent, is an Abusive Registration.

12. I have taken into account all the facts and matters relied on by each party, but have limited the findings in this decision to those necessary to dispose of the dispute in accordance with the Policy. Therefore, it is not necessary to resolve all the issues raised by the parties. Paragraph 7.3.3 of the Policy requires a respondent to set out in the Response the grounds on which it relies in answer to the Complaint. Therefore, it was not open to the Respondent to reserve the right to rely on further grounds not set out in the Response.

13. I refer to, and repeat as findings, paragraphs 3 and 4 above.

## **Rights**

14. By paragraph 1 of the Policy, -

*‘Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.’*

15. The copy extracts from the register of UK trade marks exhibited to the Complaint record that BLSL is the owner of UK registered trade mark no: UK00002628944, registered on 10 August 2012. I accept the Complainant’s case that it is the owner of the trade mark, having purchased it from BLL, as set out in the Complainant’s response to the Respondent’s further statement.
16. The registered mark is a device mark in the form of a logo, which largely consists of the name ‘bookinglive’ in a stylised form. The registration is in Class 42, namely ‘scientific and technological services, ...; design and development of computer software; ..’, etc.
17. Even if, contrary to my finding that BLSL is the owner of the trade mark, BLSL is likely to own unregistered (passing off) rights in that device mark for the following reasons. BLSL is based in Bristol. The mark is featured prominently on its website at <https://www.bookinglive.com>, to which the Complainant referred in support of the Complaint.
18. The website at <https://www.bookinglive.com>, in sections titled ‘Our Story’ and ‘Customers’ refer to the company having become, as I accept, an approved supplier to H.M. Government in March 2015 for services relating to Cloud computing and providing booking and appointment software to local and central government.
19. I have also taken into account the audio-visual testimonial by the Head of Education for Bristol 2015 and the contents of the Complainant’s website, particularly those parts referring to other customers in the public and related sectors. I accept that these have been customers of BLSL (or of BLL). They include Nottinghamshire Council, East Lothian Council, Hampshire County Council, Guildford Council, Wimbledon Park Primary School, Clifton College and the National Water Sports Centre.

20. I accept that BLSL has not provided the evidence that one would expect of a claim to own rights in passing off, such as turnover and levels of advertising. Nonetheless, in all the circumstances, it is likely that the trading name 'bookinglive' (in the stylised form) is distinctive of the services now provided by BLSL and no longer provided by BLL. In so concluding, I also accept that the goodwill of BLL was purchased by BLSL as alleged by the Complainant.
21. Even though the Respondent (and very possibly others) may think very little of BLL and of BLSL, I am satisfied that the word 'bookinglive' in its logo form is distinctive of the computer software products and services provided by BLSL and that there is UK goodwill (i.e. the attractive force that brings in custom) in that trade name and logo, which is now owned by BLSL.
22. The portmanteau word 'bookinglive' is similar to the word 'bookinglivesoftware.co.uk, the 'co.uk' suffix being ignored for the purposes of the comparison under the DRS. The word 'bookinglive' is the distinguishing part of the mark. Therefore, the Complainant has Rights in respect of a name or mark, which is similar to the Domain Name. Accordingly, the Complainant has established that it owns Rights.

### Abusive Registration

23. By paragraph 1 of the Policy, -

*an **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 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.*

By paragraph 5 of the Policy, -

**5. Evidence of Abusive Registration**

*5.1 A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is 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;*

.....

24. Paragraph 8 of the Policy provides as follows, -

**8. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration**

*8.1 A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:*

*8.1.1 Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

*8.1.1.1 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;*

*8.1.1.2 been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name; or*

*8.1.1.3 made legitimate non-commercial or fair use of the Domain Name.*

*8.1.2 The Domain Name is generic or descriptive and the Respondent is making fair use of it;*

.....

*8.2 Fair use may include sites operated solely in tribute to or in criticism of a person or business.*

.....

25. The cases under the DRS relating to tribute sites and criticism sites show that an important consideration is whether the domain name is in substance identical to the Complainant's name or mark or whether the domain name itself indicates that the site is by way of tribute or criticism.<sup>1</sup> An example of the latter was the

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<sup>1</sup> For present purposes, it matters not that the decisions were made under different versions of the Policy.

registration ‘*opticaexpressruinedmylife*’, D00011271, where the complaint failed. In such cases, the registration is more likely not to be abusive. However, even if the domain name is obviously a criticism site, the registration may still be abusive; e.g. ‘*ihateryanair.co.uk*’, D00008527, where the respondent was found to have derived a financial advantage from the site. In cases where the domain name is in substance identical to the name or mark, it is much more difficult to show that the registration is not abusive, because the registration is tantamount to impersonation, which is rarely fair. In *scoobydoo.co.uk*, DRS 00389, the Appeal Panel stated -

*In the view of the majority of the Panel, in the context of a tribute site, the vice is in selecting a domain name, which is not one’s own name, but which to one’s knowledge is identical to the name of another, which one has selected precisely because it is the name of that other and for a purpose which is directly related to that other. For a tribute or criticism site, it is not necessary to select the precise name of the person to whom one wishes to pay tribute or criticise. In this case the domain name could have been ‘*ilovescoobydoo.co.uk*’, for example.*

26. In *rayden-engineering.co.uk* DRS 06284, the Appeal Panel stated, -

*We consider that there is a limit to how much significance can be placed on the content of the protest website by an Expert. As countless Experts and Appeal Panels have remarked, the DRS is intended to be a relatively simple, low cost and efficient system for resolving domain name complaints. The system does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts. There is limited scope for adducing witness evidence or for the Expert to test the truthfulness of the evidence being presented in cases where it is bitterly contested. Protest sites classically carry personal, emotive versions of events, often expressed in deliberately shocking or vitriolic terms intended to attract attention to the cause. The statements may well be libelous in legal terms, but it is unlikely to be possible or appropriate for the Expert to determine in the context of the paper based DRS*

*whether the statements are in fact true so that the defence of justification would be available.*

*Although an Expert may in many cases form an impression as to whether the views expressed on a protest site are justified or true, we do not consider that in general the legitimacy of the use of a particular domain name should turn on such a judgement. There may, however, be occasional cases where the use of the domain name is so obviously offensive or immoral that an Expert could conclude that a submission of fair use could not be maintained. Equally, there could be exceptional cases where the use of the domain name for criticism is so obviously justified that a submission of fair use appears reasonable. ...*

*The issue at the heart of this case is the registration of the Complainant's identical name – Rayden Engineering – as a domain name for the purposes of pointing to a protest site ..*

*In the Nominet Appeal case DRS 02193 (guidestar.co.uk), the Appeal Panel stated that:*

*"Registering as a domain name, the name of another (without any adornment), knowing it to be the name of that other and intending that it should be recognised as the name of that other and without the permission of that other is a high risk activity insofar as the DRS Policy is concerned. Ordinarily, it would be tantamount to impersonating the person whose name it is.*

*Rarely will it be the case that deliberate impersonation of this kind will be acceptable under the DRS Policy." .....*

27. The Respondent's website contains highly critical statements of both BLL, BLSL and the management teams of both companies. The criticisms go beyond criticisms of the activities of BLL. They warn potential customers of BLSL, the new business, to take great care before dealing with it, because (among other things) it is being run by the same people who were responsible for the



reprehensible commercial activities of BLL and the demise of that company, leaving unpaid creditors.

28. In so concluding, I have taken into account the contents of the website, as set out in the annexes accompanying the Complaint and as they appear in revised form in the copy extracts from the website annexed to the Complainant's further statement.
29. ***The Website in the Form referred to in the Complaint*** This included the following statements, -

***Delusional, inept and fraudulent***

***Delusional*** They will talk the talk, promise delivery times and write service level agreements and then break them constantly, their approach is completely delusional, so do not believe the contract you may have signed!

***Inept***, here are some facts. The original Booking Live Ltd is in liquidation and they are currently trading as Booking live Software Ltd however they neglected to secure the URL Booking Live Software .co.uk and .com. How inept can you be? A software company that does not secure their own web address!!!

***Fraudulent***, we signed a contract to deliver a booking management system and website with an agreed timescale and budget and acknowledged contingency. It was for a healthy five figure sum. After months of failed promises, Booking Live Ltd confirmed that the figure would change to a six figure sum, effectively trebling the budget.

This was on the back of an independent specification document we delivered and Booking live was contracted to.

After a further conversation in which we implied imminent legal action, the response from Booking Live Ltd was to state that they had "not accounted for their Sri Lankan personnel costs" and could reduce the overall costs to just twice the original contract price!

That's a reduction of tens of thousands of pounds within two conversations!

*So in my opinion this characterises their delusional, inept and fraudulent approach.*

.....

*So, the facts are clear, you can use whatever company check website you like they will all be the same, Booking live Ltd is in liquidation, the new Booking Live Software Ltd is trading on a liquidated company URL, bought out by the management team.*

*The liquidators are endeavouring to recoup costs for many, many past customers. .*

.....

*Ultimately I have given you hindsight based on my personal and costly experience with dealing with them. There's many booking systems and website developers details available on the internet, but if you choose Booking live Software ltd then you have been warned ..*

...

*Make sure you're familiar with the ring leaders that are happy to promise, take your funds and then put the company into liquidation to start the next day under a new name ...*

30. ***The Revised Form of the Website*** The home page indicated that the purpose of the website was one of review, '*Booking Live Software - We Review Systems and Websites.*' The website included a section reviewing various systems and companies', which included a piece as follows, -

*Booking Live Software by Booking Live Ltd*

.....

*Pro's: ...*

*Cons: ...*

*Recommend / History: Absolutely not, avoid at all costs.*

*Unfortunately everything stops as soon as you start to actually work with the team, woefully under skilled, atrocious customer service and highly un-professional. ....*

*After 9 month [sic] of failed promises the contracted price of £38,000 trebled in price! This was promptly (within 1 conversation) reduced*

*after a legal challenge was implied to £67,000 due to the fact that Booking Live Ltd had not accounted for the **Sri Lankan charge rate!** The facts, Bookinglive ltd [sic] are now **DISSOLVED**. Their new name is Bookinglivesoftware, they're so **inept** that the company did not register their own url to match the company name. **Avoid at all costs.***

31. On another page of the website the following words appear, -

***A pause for thought. .***

*I wonder if you contacted any of their customers of the original Booking Live Ltd company that they knew it was in liquidation?\**

*I know the ones I have spoken to did not know this customary courtesy! If you were to have a transparent working relationship with an essential partner such as your booking management system company you would want to know they were not in liquidation? Right?*

*\*Update: **booking live ltd** is now dissolved, and long with it £000's of customers [sic] money!*

*Feb 25, 2017.*

32. As indicated by the decision of the Appeal Panel in *rayden-engineering.co.uk*, the DRS is a paper-based system of dispute resolution that does not contemplate a detailed analysis of factual disputes or the forensic weighing up of conflicting accounts. In those circumstances, I am unable to decide the underlying merits of the dispute between BLL and ACL or the propriety or otherwise of the steps taken by Mr Morgan and any others to place BLL into liquidation, dissolve that company and for the business of BLL to be taken over by a phoenix company, BLSL. I am satisfied that this is not one of those exceptional or occasional cases (see again, *rayden-engineering.co.uk*) where it would be appropriate to decide that the submission of fair use appears to be plainly correct or incorrect.
33. I accept that in view of the evidence relied on by each side to this dispute the Respondent genuinely holds the views that have been expressed on the website.

34. However, it is clear that the Respondent registered the Domain Name so that internet users would visit the Respondent's website because of the Domain Name, believing it to be a website of or authorised by the Complainant. He used a choice of name, i.e. 'bookinglivesoftware', that was similar to the trade name in respect of which the Complainant has Rights, namely 'booking live' and was also the identifying part of the Complainant's corporate name, to which he referred in his criticism website.
35. In those circumstances, it is clear that by his choice of domain name, the Respondent sought to impersonate the Complainant in order to target actual or potential customers of the Complainant with his criticisms. Therefore, the Respondent has created a likelihood of confusion. This confusion arises directly from the impersonation of the Complainant, as visitors to the website suffer 'initial interest confusion', being lured in to the site. In *rayden-engineering.co.uk* the Appeal Panel rejected an analogy advanced by the Respondent and provided one of its own, which reflected the facts of that case as follows, -

*... the Respondent erects a sign post on the road leading to the Complainant's premises reading simply "Rayden Engineering" and pointing down a side street. Those turning down the side street would shortly come across a prominent stand with banners and posters promulgating the Respondent's complaints and protests about the Complainant's activities. Those arriving there would quickly realise that they had come to the wrong place. Some would tut impatiently about the fact that they had been fooled and turn around and go back to continue their search for the Complainant's premises; but others might decide simply to carry on and find another engineering company; others still might pause and read the material on the stand – that they would not otherwise have read – and possibly think less of the Complainant as a result of reading what was there. The result is that damage is done by the misdirection, which leads people to the stand which they would not otherwise have arrived at.*

36. I find it likely that that the Domain Name has been, and continues to be, used by actual or potential customers of BLSL and that they would experience initial interest confusion in searching for BLSL on the internet. Having reached the website as a result, those customers would be likely to react in the variety of ways identified by this analogy.
37. It was open to the Registrant to register and use a domain name that did not impersonate the Complainant to mount his many criticisms. That he chose not to do so, but to register a domain name that he knew impersonated the Complainant and thereafter published material of the nature set out in this decision was unfair in all the circumstances.
38. In view of the matters set out above, I find that the Domain Name was registered primarily for the purpose of unfairly disrupting the business of the Complainant within the meaning of paragraph 5.1.1.3 of the Policy.
39. In view of the facts found, I also conclude that the Complainant has established, within the meaning of paragraph 5.1.2 of the Policy, circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused and 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.
40. I find that the Respondent has established none of the grounds specified in paragraph 8 of the Policy and that there is no other reason that justifies the registration.
41. In all the circumstances, registration of the Domain Name took unfair advantage of and was unfairly detrimental to, the Complainant's Rights. Further, the Domain Name is being used and has been used in a manner which has taken unfair advantage of and has been unfairly detrimental to those Rights.
42. Therefore, the Domain Name is an Abusive Registration.

## **Decision**

43. The Complainant has Rights in a name or mark, which is similar to the Domain Name, and the Domain Name in the hands of the Respondent is an Abusive Registration.
  
44. Therefore, the Expert determines that the Domain Name bookinglivesoftware.co.uk be transferred to the Complainant.

**Signed**

**Dated 31.03.17**

**STEPHEN BATE**