



DISPUTE RESOLUTION SERVICE

D00018539

Decision of Independent Expert

Knaus Tabbert GmbH

and

Ms Charity King

1. The Parties

Complainant: Knaus Tabbert GmbH
Helmut-Knaus-Straße 1
Jandelsbrunn
94118
Germany

Respondent: Ms Charity King
Bank House, Market Square
Congelton
Cheshire
CW12 1ET
United Kingdom

2. The Domain Name(s)

knaus.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.

- 14 February 2017, the Dispute was received.
- 16 February 2017, the Complaint was validated.
- 16 February 2017, the Notification of the Complaint was sent to the Parties.
- 07 March 2017, the Response reminder was sent.
- 10 March 2017, the Response was received.
- 10 March 2017, the Notification of Response was sent to the Parties.
- 15 March 2017, the Reply reminder was sent.
- 16 March 2017, the Reply was received.
- 16 March 2017, the Notification of Reply was sent to the Parties.
- 23 March 2017, a Mediator was appointed.
- 23 March 2017, Mediation started.
- 11 April 2017, Mediation failed.
- 11 April 2017, close of Mediation documents was sent.
- 25 April 2017, the Complainant full fee reminder was sent.
- 03 May 2017, the Expert decision payment was received.

4. Factual Background

- 4.1 The Respondent registered the Domain Name on 6 June 2006. The website linked to the Domain Name has been used as a parking site for links controlled by a third party, Sedo.
- 4.2 The Complainant produces leisure vehicles under different brands, one brand being under the name KNAUS (the '**Name**').
- 4.3 The Complainant is the registered owner of a number of German trade marks in respect of the Name (e.g. zur Marke 885890, register date 28/09/1971) and a European trade mark (004601845, filing date 23/08/2005) (collectively the '**Marks**').

5. Parties' Contentions

The Complaint

For the purposes of this section of the Decision, the Expert has summarised the submissions of the Parties but only insofar as they are relevant to the matters that the Expert is required to determine under Nominet's Dispute Resolution Service ('**DRS**') Policy (the '**Policy**').

5.1 In summary, the Complainant submitted that the Complaint should succeed for the reasons below.

The Complainant's Rights

- The Complainant submitted that it has Rights in respect of a name or mark which is identical or similar to the Domain Name.
- The Complainant contended that it has Rights in the Domain Name because it is in possession of different international trade marks for the brand KNAUS (with the Complainant exhibiting the Marks).
- The Complainant explained that its vehicles are sold through an international distribution network of dealers and it has customers in the UK.
- Further, the Complainant stated that it has registered various URLs which incorporate the Name, including www.knaus.de (registered 8 August 2005), www.knaustabbert.de (registered 7 August 2005) and www.knaus-uk.co.uk (registered 5 December 2014).
- The Complainant explained that the website attached to the URL www.knaus-uk.co.uk is a website about KNAUS caravans and camper vans for UK customers, and this domain name is very similar to the Domain Name. The Complainant noted that that domain name is currently owned and used by its area manager and agent.

Abusive Registration

- The Complainant submitted that the Domain Name, in the hands of the Respondent, is an Abusive Registration as the Domain Name has been used and/or was registered or otherwise acquired in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.
- The Complainant submitted that the website attached to the Domain Name (the 'Website') is "*image-damaging*" for the Complainant and the brand KNAUS as the "*website is regarded to be very unsafe*" and those visiting the Website "*will be forwarded to competition promotion page where a text appears that contains congratulations to winning the competition.*"
- The Complainant submitted that "*this website is in our opinion only for catching contact data, people get fooled and in worst case you get some viruses and trojans.*"

The Respondent's Response

- 5.2 In summary, the Respondent submitted that the Domain Names should not be transferred to the Complainant for the reasons set out below.

The Complainant's Rights claim

- The Respondent submitted that the Complainant does not have Rights in respect of a name or mark which is identical or similar to the domain name.
- The Respondent submitted that, just because the Complainant has registered other domain names, such as *knaus-uk.co.uk*, it does not entitle the Complainant to the Domain Name.
- The Respondent referenced that the Complainant had provided details of its trademark registrations in German "*and it is my understanding that all evidence supplied as part of a Nominet DRS complaint must be provided in English.*" The Respondent submitted that the evidence should be dismissed because it is not provided in English.
- The Respondent stated that she had "*looked through the trademark information provided and translated what I could. In the evidence provided I could not find any reference to a trademark valid in the UK.*" The Respondent also conducted her own trademark search and "*found only one mark registered on the text "Knaus" by the complainant. The mark entered the UK trademark register on 2nd August 2006.*"
- The Respondent submitted that the Complainant did not provide any evidence of trading in the UK except for the website *knaus-uk.co.uk*, "*which it does not own or control by it's own admission.*"
- The Respondent stated that the Complainant cannot claim any Rights at the time of registration of the Domain Name as the Complainant's "*EU trademark did not enter the register until over a month after our registration of the domain name.*"

The Complainant's Abusive Registration claim

- Even if Rights could be claimed, the Respondent submitted that the Complainant has not provided any evidence that the registration of the Domain Name was unfairly detrimental to those Rights or that the Domain Name has been used in a manner which takes unfair advantage of those Rights.
- The Respondent submitted that the registration of the Domain Name was not an abusive registration, and stated that she had registered the Domain Name in

good faith while *“working on a German genealogy project [noting that] Knaus is a well known surname.”* The Respondent provided the Expert with a link to a www.ancestry.co.uk genealogy search on the Name.

- The Respondent provided in support of her submission a list of five other German surnames that she had registered as domain names *“many years ago for the same project”*, also providing genealogy information on each surname. The Respondent stated that it was in *“a pattern of registering domain names that were suited to our project.”*
- Further, the Respondent submitted that the Complainant had not provided any *“credible evidence whatsoever that shows that our registration of the domain name was in any way abusive.”*
- In response to the Complainant’s assertion that *“the website is regarded to be very unsafe”*, the Respondent stated that the website shown *“at the end of the domain knaus.co.uk is not controlled by us [but] is controlled by a third party – Sedo [which is a domain parking service].”* Further, the use of a domain parking service is not proof of an abusive registration under the DRS Policy.
- The Respondent did not consider relevant that the Complainant's browser or anti-virus software considered the site shown by Sedo as *“unsafe”* and *“[t]hese ads are approved by Sedo and their partners and are shown on millions of pages across the internet.”*
- The Respondent stated that it did *“not control the ads or websites shown by Sedo [and that] the [Complainant] should take this up with Sedo.”*
- Finally, the Respondent noted that, since *“we registered this domain name in 2006, the Complainant has not once contacted us to try to resolve this matter amicably [and] the domain name was of no interest to the complainant until relatively recently.”*

Complainant’s Reply

5.3 In summary, the Complainant submitted that:

- *“[n]early every name or name of a trademark exists as a surname. Knaus is no exception”* and, because the Respondent does not bear the name “KNAUS” as a surname, she does not have the right to register the Domain Name. Therefore, the argument regarding the genealogy project is invalidated.
- The Respondent has registered other German names; including *Rossmann*, which is one of the *“biggest drugstore chains in Germany”*, *Reichmann*, *Spieler* and

Steck – noting that, when a person visits each of those domains, an offer for sale of that domain name appears.

- The domain name “*rossman.co.uk*”, which is registered by the Respondent, is “*another good example for an abusive registration: Rossmann is one of the biggest drugstore chains in Germany*”, noting that this registration is “*not legal because the registrant does not bear the name Rossmann.*”
- When a person visits the website with the domain name, *rossmann.co.uk*, then an offer for sale of that domain name appears, “*so the argument regarding the genealogy project is invalidated.*”
- As the Website is not controlled by the Respondent, but by the parking site provider ‘Sedo’, the Respondent does not need and use the Domain Name and thus it is not necessary for the Respondent to have the rights for the Domain Name. Further, the Complainant noted that “*Sedo is the “Ebay” for Domains [being] a platform for domain trading with an auction system.*”
- The intent of the Respondent “*is to register well-known trademarks and offer this domains for sale.*”

6. Discussions and Findings

General

6.1 To succeed in the Complaint, the Complainant has to prove pursuant to paragraph 2 of the Policy that, on the balance of probabilities:

i. [it] has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

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

6.2 Addressing each of these limbs in turn:

Rights in respect of a name or mark which is identical or similar to the Domain Name

6.3 The Expert considers that, for the reasons set out below, the Complainant has Rights in a name or mark which is identical to the Domain Name.

6.4 Paragraph 1 of the Policy defines ‘Rights’ as:

[...] rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning;

- 6.5 The Expert notes that the Complainant holds various trade mark registrations, including a European trade mark.
- 6.6 The Respondent submitted that the Expert should not consider as relevant the Complainant's Marks because they are written in German. In response, the Expert notes that the DRS Policy does not make such a distinction. Further, Nominet Experts' Overview (paragraph 1.5 - http://www.nominet.uk/wp-content/uploads/2015/08/Expert_Overview.pdf) sets out that, while the rights must be enforceable rights, there is no geographical/jurisdictional restriction to them and, if it *"were otherwise, the '.uk' domain would be likely to become a haven for cybersquatters."* Therefore, the Expert considers that the German/European Marks provided by the Complainant, while not being written in English, are relevant when deciding whether or not the Complainant has Rights in this context.
- 6.7 Further, the Respondent submitted that the Complainant cannot claim any Rights at the time of registration of the Domain Name as the Complainant's European trade mark was not registered *"until over a month after our registration of the domain name."* However, as has been addressed in a previous DRS Decision (D00012473), that the registration of a trade mark post-dates the registration of the Domain Name is not relevant when considering whether or not the Complainant has Rights. This is because the Complainant must have the Rights in question at the time of the complaint (Nominet Appeal decision, *ghd.co.uk*, DRS No. 03078).
- 6.8 The Expert further notes more generally the information provided by the Complainant on its www.knaus-uk.co.uk website, including that it has been building caravans since 1960.
- 6.9 As to whether the Respondent has Rights in the Name, the Complainant submitted that, because the Respondent does not bear the name "KNAUS" as a surname, she does not have the right to register the Domain Name. It is worth noting in this regard, and as referenced at paragraph 1.8 of the Experts' Overview, whether or not rights in a personal name give rise to a Right will depend on the facts. Indeed, a party to the dispute seeking to assert rights in respect of a personal name needs to be able to establish that there is an enforceable right in respect of the name. The Expert considers that the Respondent has provided no compelling evidence that she has Rights in the Name.
- 6.10 In addition, the Expert considers that the Domain Name includes the *".co.uk"* suffix does not sufficiently distinguish the Domain Name from the Name/Marks.
- 6.11 Given those factors, the Expert considers that, at the time of the Complaint, the Complainant had Rights in the Name/Marks which is identical to the Domain Name.

Abusive Registration

6.12 For the reasons set out below, the Expert considers that the Domain Name is an Abusive Registration as understood by the Policy.

6.13 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. 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;

6.14 *In relation to i. above*, the Expert considers that the Domain Name was an Abusive Registration at the time the Domain Name was registered.

6.15 The Policy, at paragraph 5, sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Specifically, the Expert considers that the factors set out at paragraphs 5.1.1.2 and 5.1.1.3 are relevant.

6.16 In relation to the above factors, the generally held view among DRS Experts is that the Respondent should have had knowledge of the Complainant and/or its Rights when registering the Domain Name for there to be a finding of an Abusive Registration. Noting the Respondent's stated interest in German names, the Complainant's prior registered domain names (e.g. *knaus.de*), and that the Complainant held various trade marks (e.g. German trade mark 885890) or had applied for a European trade mark (European trade mark 004601845) at the time of the registration of the Domain Name, the Expert considers that the Respondent is likely to have been well aware of the Complainant and its Name/Marks at the time of the Domain Name registration on 6 June 2006.

6.17 The Expert is not persuaded by the Respondent's submission that she registered the Domain Name as part of a German genealogy project, and her provided genealogy information. Indeed, on the balance of probabilities, the Expert considers that the Respondent specifically chose to register the Domain Name with the intention of benefitting from the Complainant's Name/Marks – in order to attract to the website linked to the Domain Name (the '**Website**') users who would be looking for the Complainant and its services (the purpose of which would be to disrupt unfairly the business of the Complainant).

6.18 Further, the Expert considers that, by registering the Domain Name, the Respondent has prevented the Complainant from so doing.

6.19 Therefore, for the reasons set out above, the Expert considers that the registration of the Domain Name took unfair advantage of, and was unfairly detrimental to, the Complainant's Rights.

6.20 *In relation to (ii) above*, the Expert also considers that the Domain Name was and is an Abusive Registration as a result of its manner of use by the Respondent.

6.21 The Expert considers that paragraph 5.1.2 of the Policy is relevant, whereby a factor which may be evidence that the Domain Name is an Abusive Registration is:

Circumstances indicating that the Respondent is using [...] 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;

6.22 The confusion referred to above is confusion as to the identity of the person or entity behind the Domain Name. The Expert considers that the Domain Name is identical to the Complainant's Name/Marks (save for the ".co.uk" suffix), and cannot sensibly refer to anyone else.

6.23 As evidenced by the Website print-out provided to the Expert by the Complainant, and referenced by the Parties, the Respondent has used the Website as a parking site controlled by a third party, Sedo - which is where a person allows a third party to use the URL to 'park' links in that webpage to other websites and the person then earns revenue when a user clicks on those parked links. The print-out submitted by the Complainant showed a 'parked' link to a competition website.

6.24 The Expert considers that, as referenced at paragraph 8.5 of the Policy, while the sale of web traffic in this way "*is not of itself objectionable under this Policy*", the Expert will take into account when making his decision as to whether or not the Domain Name's use is an Abusive Registration - the nature of the Domain Name, the nature of the advertising links on any parking page associated with the Domain Name and that the use of the Domain Name is "*ultimately the Respondent's responsibility.*"

6.25 In this regard, the Expert considers that those users accessing the Website would likely be confused that the services for sale on the Website via the parked links, which includes the competition link that the Complainant referenced, are either the Complainant's or are at least endorsed by the Complainant.

6.26 The Expert considers that the use of the Domain Name as described, for the reasons referenced above, has taken unfair advantage of the Complainant's Rights by seeking to rely on the Complainant's goodwill and reputation in the Name/Marks to generate web traffic to the Website, and to the 'parked' websites promoted on the Website – web traffic that was meant for the Complainant. It is also unfairly detrimental to the

Complainant as those accessing the Website will likely consider that the Complainant is among other things running online competitions, which is not the case.

- 6.27 Further, the Expert is not persuaded by an argument that a person accessing the Website on the assumption it was the Complainant's website would soon realise his or her mistake, as the damage to the Complainant's business would already have been done.
- 6.28 The Expert has considered whether there is evidence before him to demonstrate that the Domain Name is not an Abusive Registration but does not consider there is. Indeed, the Expert considers that there is no obvious justification for the Respondent having registered the Domain Name.
- 6.29 Therefore, for the reasons set out above, the Expert considers that the use of the Domain Name took unfair advantage of, and was unfairly detrimental to, the Complainant's Rights.

7. Decision

- 7.1 The Expert finds that, on the balance of probabilities, the Complainant has Rights in respect of a name or mark which is identical to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. Therefore, the Expert directs that the Domain Name be transferred to the Complainant.

Signed: Dr Russell Richardson

Dated: 29 May 2017