

DISPUTE RESOLUTION SERVICE

D00022992

Decision of Independent Expert

Peggy Peg Innovative Systems GmbH

and

Mark Hobbs

1. The Parties:

Complainant:

Peggy Peg Innovative Systems GmbH
Itzgrund 21
95512 Neudrossenfeld
Germany

Respondent:

Mr Mark Hobbs
United Kingdom

2. The Domain Name:

peggypeg.co.uk (the "Domain Name")

3. Procedural History:

- 3.1 I 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 such a nature as to call in to question my independence in the eyes of one or both of the parties.

3.2 Timeline

21 September 2020 Dispute received
22 September 2020 Complaint validated
22 September 2020 Notification of complaint sent to parties
09 October 2020 Response reminder sent
09 October 2020 Response received
09 October 2020 Notification of response sent to parties
12 October 2020 Reply received
14 October 2020 Notification of reply sent to parties
14 October 2020 Mediator appointed
19 October 2020 Mediation started
11 November 2020 Mediation failed
11 November 2020 Close of mediation documents sent
18 November 2020 Expert decision payment received

4. Factual Background

- 4.1 The main body of the Complaint does not contain any information on what the Complainant's business is, or what products or services the Complainant provides. The Complaint does, however, refer to the Complainant's website at <<https://peggypegs.de/en>> in support of the Complainant's dispute. It also contains (as an attachment) a screenshot of a page from that website which provides some detail (including pictures and a video) of screw-type tent and awning fixing products marketed under the name "Peggy Peg".
- 4.2 The Complainant is the owner of European Union trade mark registration number 007549298 for the word "Peggy Peg" in classes 6, 20 and 22 with a registration date of 24 December 2019.
- 4.3 The Domain Name was registered on 24 October 2008. As at the date of this decision, the Domain Name resolve to the home page of a web hosting company. As at the date of the Complaint, the Domain Name redirected to the domain name <ezipeg.co.uk> and the website to which that name resolved was selling motorhome, caravan and tent pegs and clips.

5. Parties' Contentions

- 5.1 A summary of the Complainant's contentions is set out below.

Rights

- 5.2 The Complainant asserts that since 2008, its 'Peggy Peg' trade mark has been used extensively in the European Union for the products in respect of which the trade mark is registered.
- 5.3 The Complainant further asserts that it sells its products through various partners in several European countries. In the UK, the Complainant's products are sold to retailers through various wholesalers.
- 5.4 In 2008, the Complainant says that it entered into a distribution agreement with John Scott, operating under the name "Motorists' Discount Center" and began to sell its "Peggy Peg" products through that distributor. To the Complainant's knowledge, it was John Scott who originally registered the Domain Name, and he used it to sell the Complainant's "Peggy Peg" products through an online shop offering only the Complainant's products.
- 5.5 The Complainant asserts that John Scott, as referred to above, sold his business (including the distribution agreement with the Complainant) to Paul Seydenham in 2013. Paul Seydenham then continued to sell the Complainant's products through the website located at the Domain Name.

Abusive Registration

- 5.6 The Complainant asserts that in July 2019, Paul Seydenham terminated the cooperation between himself and the Complainant, and that he then stopped distributing the Complainant's products.
- 5.7 The Complainant has since discovered that the Domain Name is being redirected to the domain name <ezipeg.co.uk>. The Complainant contends that the website to which this domain name resolves is the new online shop of Paul Seydenham and that he trades under the name "Ezipeg".
- 5.8 The Complainant has no contractual agreement with the current Respondent, Mark Hobbs, concerning the use of the Complainant's name "Peggy Peg" in the UK.
- 5.9 The Complainant contends that the Respondent is using the Domain Name to link to a website offering products for sale and distribution which compete with the Complainant's products, as well as some products which are counterfeits of the Complainant's products. As a result, the Complainant says that the Respondent is acting abusively and that such actions constitute abusive registration of the Domain Name.
- 5.10 Further, the Complainant contends that by redirecting the Domain Name to an online shop (located at the domain name <ezipeg.co.uk>) run by a former distributor of the Complainant and now a competitor of the Complainant, Internet buyers and users are deceived and misled into thinking that they would be able to purchase the Complainant's products at such site. The

Complainant asserts that this deception is reinforced by the fact that some of the products available for sale on the <ezipeg.co.uk> website are copies of the Complainant's products.

The Respondent

- 5.11 The Respondent states in his Response that the redirection of the Domain Name has stopped, the Domain Name is no longer responding to web requests, and he will not be renewing the registration of the Domain Name after it expires on 24 October 2020. The Respondent does not otherwise deal with any of the issues raised by the Complainant in its Complaint.

The Complainant's Reply

- 5.12 The Reply was submitted by the Complainant's representative who simply asks whether it is possible for the Respondent to automatically transfer the Domain Name to its client (the Complainant) after the Respondent has abandoned his registration of the Domain Name, or whether such transfer is already happening as a result of these ongoing DRS proceedings.

6. Discussions and Findings

General

- 6.1 For the Complainant to succeed with its Complaint, it is required under paragraph 2.2 of the Policy to prove to the Expert, on the balance of probabilities, that:
- I. the Complainant 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.

Complainant's Rights

- 6.2 Paragraph 1 of the Policy provides that 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*". Rights may be established in a name or mark by way of a trade mark registered in an appropriate territory, or by a demonstration of unregistered so-called 'common law rights'.
- 6.3 The Complainant is the owner of a European Trade Mark registration for the word 'Peggy Peg'. In addition, it has provided some (albeit extremely limited)

evidence to show that it markets products under the 'Peggy Peg' name, through its website located at <<https://peggypegs.de/en>>.

- 6.4 In addition, the Complainant has supplied some evidence of its use of the name "Peggy Peg" in relation to its products. Although this evidence is quite limited, given that the Respondent does not dispute that the Complainant has been using that name for many years (such use being both by itself and its distributors, including in the UK), the Expert concludes that the Complainant has also established some unregistered rights in the name "Peggy Peg".
- 6.5 For completeness, the Expert notes that the trade mark referred to in paragraphs 4.2 and 6.4 above achieved registration only after the Domain Name was originally registered. However, it is well accepted that the question of whether the Complainant has Rights falls to be considered at the time that such Complainant makes its Complaint and is a test with a low threshold to overcome.
- 6.6 Excluding the generic suffix 'co.uk', and the inclusion of a space between the two words contained in the Complainant's mark (which it is not possible to replicate in a .uk domain name), the Domain Name is identical to the 'Peggy Peg' mark in which the Complainant has Rights.
- 6.7 The Expert consequently finds that the Complainant has Rights in respect of a mark which is identical to the Domain Name.

Abusive Registration

- 6.8 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 has been unfairly detrimental to the Complainant's Rights.*
- 6.9 Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. Examples from paragraph 5 of the Policy which the Complainant implicitly relies on as a consequence of its assertions, contentions and allegations set out in its Complaint are:

"5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

.....

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;

- 6.10 Paragraph 8 of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration.
- 6.11 The Complainant asserts that the Domain Name was originally registered in 2008 as a result of an authorised distribution agreement between it and its first UK distributor. However, following the transfer of that agreement to a subsequent distributor in 2013, and the recent termination (in 2019) of that distribution agreement, the Domain Name was (at the date of the Complaint) being used to sell products which compete with, and/or are counterfeits of, the Complainant's 'Peggy Peg' products from a website located <ezipeg.co.uk>. The Respondent has neither challenged, provided an explanation for, nor otherwise denied such use. In addition, there is nothing before the Expert to suggest that the Respondent is or has previously been known by the name 'Peggy Peg' or that he has any legitimate interest in it.
- 6.12 Further, it has been generally accepted in other cases under the DRS Policy that where the Domain Name in question is in substance an unadorned reproduction of a Complainant's trade mark (or a minor variant thereof) without any additional modifying terms, that will suffice to establish confusion within the meaning of paragraph 5.1.2 of the Policy.
- 6.13 Given the fact that the Domain Name incorporates the mark in which the Complainant has Rights ('Peggy Peg') in its entirety and in unadorned form, the Expert is satisfied that consumers searching online for the Complainant and its products offered under the 'Peggy Peg' brand name are likely to expect there to be some connection between any website operated under the Domain Name and the Complainant, even before they arrive at that website (regardless of the state of that website).
- 6.14 Finally, the Expert has considered the non-exhaustive list of factors set out in paragraph 8 of the Policy which may be evidence that a Domain Name is not an Abusive Registration. These relate to the Respondent's prior knowledge, or lack of the same, of the Complainant's cause for complaint and the possibility of the Respondent making fair use of the Complainant's name. On the evidence before the Expert, the arguments presented by the Complainant and the lack of information provided by the Respondent in relation to his registration and use of the Domain Name, the Expert takes the view that

none of the provisions of paragraph 8 of the Policy can assist the Respondent in this case.

- 6.15 The Expert consequently finds that the Domain Name has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

7. Decision

- 7.1 The Expert finds that the Complainant has proved that it has Rights in a mark which is identical to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Complaint therefore succeeds.
- 7.2 Accordingly, the Expert directs that the Domain Name <peggypeg.co.uk> be transferred to the Complainant.

Signed Ravi Mohindra

Dated 11 December 2020