

Nominet UK Dispute Resolution Service

DRS 5431

Direct Wines Limited

V

Joannn Wilson

Decision of Independent Expert

1. PARTIES

Complainant: Direct Wines Limited

Address: New Aquitaine House
Exeter Way
Theale
Reading

Postcode: RG7 4PL

Country: UK

Respondent: Joannn Wilson

Address: 236 PriorRoad
Clayville
New York

Postcode: 13322

Country: USA

2. DOMAIN NAMES

laitwaites.co.uk, laithwaits.co.uk, lathwaites.co.uk, laithwates.co.uk (the "Domain Names")

3. PROCEDURAL BACKGROUND

3.1 A Complaint in respect of the Domain Name under Nominet UK's Dispute Resolution Service Policy (the "Policy") was received from the Complainant on 5 February 2008. Nominet forwarded the Complaint to the Respondent. No Response was received.

3.2 The dispute was referred for a decision by an Independent Expert following payment by the Complainant of the required fee in accordance with paragraph

5d of Nominet's Procedure for the conduct of proceedings under the Dispute Resolution Service Procedure (the "Procedure") on 19 March 2008. I was appointed as Independent Expert on 20 March 2008 and confirmed to Nominet that I was independent of the parties and knew of no facts or circumstances that might call into question my independence in the eyes of the parties.

4. OUTSTANDING FORMAL/PROCEDURAL ISSUES (IF ANY)

- 4.1 Under Paragraph 5a of the Procedure the Respondent was required to submit a Response to the Complaint to Nominet by 28 February 2008. The Respondent has failed to do so.
- 4.2 Paragraph 15b of the Procedure provides as follows: "If, in the absence of exceptional circumstances, a Party does not comply with any time period laid down in this Policy or Procedure, the Expert will proceed to a Decision on the Complaint".
- 4.3 It is the view of the Expert that there are no exceptional circumstances. The proceedings have been communicated to the Respondent and the Respondent has made no attempt to explain its lack of response and there is no evidence to suggest that anything exceptional has occurred.
- 4.4 The Expert is accordingly authorised under the Procedure to proceed to decide the Complaint. Under paragraph 16a of the Procedure the Expert should reach a decision based on the Parties' submissions (which consists of the Complaint and its Annexes in this case) and the Policy and Procedure. In the absence of any exceptional circumstances the Expert is also entitled to draw such inferences from the Respondent's non-compliance with the Policy or Procedure as he considers appropriate (paragraph 15c of the Procedure).

5. THE FACTS

- 5.1 The Complainant is a leading supplier of wine by mail order in the UK. It trades as "Laithwaites" and has web sites at laithwaites.co.uk and laithwaites.com. It has carried on business for over 30 years under this name and the filed evidence shows a significant and well known business. It owns registered trade marks in respect of the word "Laithwaites", including for example UK Mark no 2237240.
- 5.2 Although the websites located at each of the Domain Names are currently inactive, the filed evidence establishes that each of these has in the past been used in a way whereby any person visiting the site is redirected automatically to one of the Complainant's own web sites, but in a manner whereby the Complainant ends up paying commission to a third party referral service, which is then passed on to the Respondent. This happens because the Respondent's sites at the Domain Names are registered with the referral service such that "click through" commission is paid in respect of visitors who reach the Complainant's web site in this way and then make a purchase. In 2007 the Respondent appears to have received some £3000 commission in this manner.

6. THE PARTIES' CONTENTIONS

Complainant

- 6.1 The Complaint sets out a list of submissions. In essence these boil down to the following.
- 6.2 It has rights in the name Laithwaites.
- 6.3 The Domain Names are all similar to that name being obvious typographical variations or mis-spellings of the name.
- 6.4 There is no conceivable legitimate reason the Respondent could have for requiring these Domain Names.
- 6.5 The Respondent's registrations were clearly part of a scheme intended to cause the Complainant to pay commission for what it believed were genuine third party referrals, when in fact the Respondent had deliberately set about attracting persons who made a spelling mistake and then covertly referred them on to the Complainant. As such each was an Abusive Registration and the Respondent was engaged in a pattern of such registrations.

Respondent

- 6.6 As indicated above no Response has been filed.

7. DISCUSSION AND FINDINGS:

General

Discussion and Findings

- 7.1 The Complainant is required under Clause 2b of the Policy to prove to the Expert on the balance of probabilities that:
 - (a) the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
 - (b) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

- 7.2 "Rights" are defined in the Policy and in the Procedure. Rights "includes, but is not limited to, rights enforceable under English law." The Complainant is the proprietor of registered trademarks in respect of the word "Laithwaites". I am also satisfied that it has substantial goodwill in the name as a result of its trading activities over many years.

- 7.3 The Domain Names are clearly similar to the name in which the Complainant has rights. They are all typographical variations or mis-spellings of the name.
- 7.4 Accordingly I find that the Complainant does have Rights in respect of a name or mark which is identical or similar to the Domain Names.

Abusive Registration

- 7.5 Paragraph 1 of the Policy defines “Abusive Registration” as a Domain Name which either:
- (a) 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
 - (b) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.
- 7.6 A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration, is set out in paragraph 3 of the Policy. These include 3(a)(ii) "Circumstances indicating that the Respondent is using the Domain Name in a way which has confused people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant" and 3(a)(iii): "The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern".
- 7.7 There is no obvious reason why the Respondent should have any legitimate interest in any name involving a variation of the word Laithwaites. The names are clearly being used in a way in which persons entering the relevant Domain Name into a web browser will believe that the name is connected with the Complainant (indeed they end up at the Complainant's own web site). The Respondent is also engaging in a pattern of such registrations.
- 7.8 In the absence of a Response from the Respondent and in the light of clear evidence filed by the Complainant I accept that the Respondent's overall purpose in doing so was as part of a scheme to obtain commission from the Complainant by purporting to be a genuine third party referrer of customers. In fact it was merely capturing third party customers who had made a typing or spelling mistake and then passed them on to the Complainant's web site, thereby deriving commission from the Complainant, who would not have realised the referral did not come from a genuine third party site.
- 7.9 In the circumstances, I consider that the Domain Names have been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights. The Domain Names, in the hands of the Respondent, are each therefore an Abusive Registrations.

8. DECISION

Accordingly, I find that the Complainant has Rights in respect of a name or mark which is similar to the Domain Names and that the Domain Names in the hands of the Respondent are each an Abusive Registration. I therefore determine that the Domain Names be transferred to the Complainant.

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Nick Gardner

28 March 2008