

DISPUTE RESOLUTION SERVICE

D00009177

Decision of Independent Expert

Tiles Porcelain Ltd

and

Tile HQ

1. The Parties:

Complainant: Tiles Porcelain Ltd t/a buytiles.com
Unit 1, Off Littleburn Road
Littleburn Industrial Estate
Langley Moor
Durham
DH7 8JF
United Kingdom

Respondent: Tile HQ
Travis Perkins plc
Ryehill House
Rye Hill Close
Lodge Farm Industrial Estate
Northampton
Northamptonshire
NN5 7UA
United Kingdom

2. The Domain Name(s):

buytiles.co.uk

3. Procedural History:

- 3.1. A hard copy of the Complaint was received in full by Nominet on 15 October 2010. Nominet validated the Complaint and notified the Respondent of the Complaint on 20 October 2010.
- 3.2. A Response was received from the Respondent on 10 November 2010 and the Complainant's Reply was received on 17 November 2010.
- 3.3. A Mediator was appointed on 17 November 2010. Mediation commenced but failed on 25 November 2010.
- 3.4. On 25 November 2010 the Respondent provided a non-standard submission together with a brief explanatory paragraph in respect of that non-standard submission.
- 3.5. On 30 November 2010 the Complainant paid the fee to obtain an Expert Decision pursuant to paragraph 21 of the procedure for the conduct of proceedings under the Nominet Dispute Resolution Service ("the Procedure").
- 3.6. On 8 December 2010 Nick Phillips, the undersigned ("the Expert") confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as the Expert in this case and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality. Nominet duly appointed the Expert with effect from 13 December 2010.

4. Procedural Issues

- 4.1. There is one outstanding issue that I need to address. The Respondent wishes to file a non-standard submission and has submitted a brief explanatory paragraph to support the filing of such a submission pursuant to paragraph 13 of the Nominet Dispute Resolution ("the Policy").
- 4.2. The brief explanatory paragraph which the Respondent has submitted reads as follows:

“There is an exceptional need for the non-standard submission because the Complainant’s Reply is not restricted solely to matters which are newly raised in our Response and were not raised in the Complainant’s Complaint as originally submitted to Nominet contrary to section 6(b) of the Dispute Resolution Procedure. The non-standard disclosure is a letter informing the Expert of this fact.”

- 4.3. Nominet’s DRS is intended to provide a swift and cost effective resolution for domain name disputes. The procedure for doing this is well set out in the Procedure and involves the Complainant filing its Complaint, the Respondent then have an opportunity to file a Response and finally the Complainant filing a Reply. In this case both parties have availed themselves of the opportunity to file lengthy Complaint, Response and Reply. All three documents are supported by annexures.
- 4.4. I have some sympathy with the Respondent’s position. What appears to have happened here is that the Complainant has filed its Complaint without the benefit of legal advice. The Respondent has then filed a professionally put together Response and it then looks as if the Complainant has sought legal advice and has filed a Reply which has been professionally put together. I think that technically the Reply does go slightly further than one would expect from a Reply, not in the sense that it provides new information, simply that it attempts to put the Complainant’s case in a slightly more ordered and professional way.
- 4.5. Notwithstanding this, I am not going to accede to the Respondent’s request that it be entitled to file a non-standard submission. There is no suggestion that this non-standard submission contains anything that would change the nature of this dispute and indeed the brief explanatory paragraph provided by the Respondent seems to suggest that all it is, is a document pointing out that the Reply goes slightly further than one would expect. I am also conscious that if I do allow the Respondent’s request that I will almost inevitably then have to give the Complainant an opportunity to deal with any new matters arising from this non-standard submission. In my view the risk that this will unnecessarily prolong the proceedings and unnecessarily add to the volume of paper already filed in these proceedings outweighs the possibility that any injustice will be done to the parties by not allowing this non-standard submission.

5. Factual Background

- 5.1. The Domain Name was registered by Adrian Hinchcliffe (the main shareholder of Mosaic Tile Company Limited) on 18 February 2000.
- 5.2. In November 2007 the Respondent made its first foray into the retail tile market by acquiring Tile Giant Limited.
- 5.3. In July 2009 the Respondent purchased Tile HQ Limited.
- 5.4. On 19 October 2009 the Complainant acquired the domain name, buytiles.com.
- 5.5. On 2 December 2009 the Respondent acquired 49% of Mosaic Tile Company Limited.
- 5.6. On 10 March 2010 the Complainant's website at the domain name, buytiles.com went live.
- 5.7. In May 2010 the Complainant started to trade as, "buytiles.com".
- 5.8. Between about March and August 2010 the Respondent acquired a number of domain names and started to develop retail websites related to tiles. The domain names either acquired or developed by the Respondent included tilegiant.co.uk, premiumstone.co.uk, tilemagic.co.uk and tilinghq.co.uk.
- 5.9. On 10 February 2010 the Complainant filed a UK trade mark application for a device mark which included, amongst other things, the Domain Name. This was subsequently granted effective as at 10 February 2010.
- 5.10. Between 1 June and 1 September 2010 the Complainant launched an advertising campaign to promote its business which included the domain name, buytiles.com. This included a radio advertising campaign focussed on the north east of the country.
- 5.11. In June 2010 the Complainant made an offer to buy the Domain Name from its then owner, Mr Hinchcliffe, for a sum of £1,000. This was rejected.

5.12. On 24 August 2010 the Domain Name was transferred to the Respondent.

5.13. On 25 August 2010 the Respondent's website at the Domain Name went live. This marketed the Respondent's business under the name buytiles.co.uk and this website is used to sell tiles and tile related products.

6. Parties' Contentions

The parties have both filed lengthy submissions. Copies of these (absent the various attachments) are annexed to this Decision as Annex A (Complaint), Annex B (Response) and Annex C (Reply).

7. Discussions and Findings

7.1. Paragraph 2 of the Policy requires that the Complainant must prove, 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.*

Rights

7.2. I must first therefore decide whether the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name.

7.3. The definition of Rights is as follows;

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.

This has always been treated in decisions under Nominet's DOS as a test with a low threshold to overcome and I think that must be the correct approach.

- 7.4. The Complainant is the proprietor of a UK registered trade mark for a device incorporating the phrase, “buytiles.com we bananas bout tiles”. The trade mark also includes a picture of a cartoon banana holding a tile. Indeed, much of the advertising that the Complainant appears to have done includes this banana device and variations of this strap line.
- 7.5. The Respondent submits that the Complainant has no rights in the “generic phrase”, “buy tiles” and further that the words “buy tiles” are not the dominant part of the mark which the Complainant uses to promote its business.
- 7.6. The Complainant has however also provided evidence of having traded as buytiles.com since at least May 2010 and indeed uses this expression prominently on its own website at www.buytiles.com. The Complainant has also submitted evidence of its radio advertising including a copy of the script used which uses the phrase, “buytiles.com” on five occasions in a very short advertisement. The Complainant has also submitted evidence relating to its advertising spend which does show substantial sums being spent by the Claimant in promoting its business during June, July and August 2010 although arguably much of this was spent on building up the whole of the Complainant’s brand which includes not only the name “buytiles.com” but also at least the device of the cartoon banana holding a tile.
- 7.7. The mark, “BUYTILES” is a descriptive one. It may not be wholly descriptive of the Complainant’s business but it is wholly descriptive of what the Complainant would like people who come to its website to do. However, taking everything into account including the traditionally low threshold test under Nominet’s DRS and very much on the balance of probabilities I conclude that on the basis of the advertising that the Complainant has done that the Complainant does have Rights in a name or mark which is identical or similar to the Domain Name.

Abusive Registration

- 7.8. Abusive Registration is defined in Paragraph 1 of the Policy 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 was unfairly detrimental to the Complainant's Rights.*

This definition allows me to consider whether the Domain Name is an Abusive Registration either at the same of registration/acquisition or subsequently through the use that was made of it.

7.9. Paragraph 3 of the Policy provides a non-exhaustive list of the factors which may evidence that a domain name is an Abusive Registration and Paragraph 4 of the Policy provides a non-exhaustive list of the factors which may evidence that the Domain Name is not an Abusive Registration.

7.10. In this case the Complainant has no issue with the previous owner of the Domain Name who did not use the Domain Name to link to a website. Indeed, although it is not entirely clear, the Complainant does not appear to really object to the Respondent acquiring the Domain Name. It is the Respondent's use of the Domain Name to run a website which promotes the Respondent's range of tiles and tile accessories that the Complainant objects to.

7.11. The Respondent says that it did not know about the Complainant's use of buytiles.com until the end of June 2010 and by that time it was committed to developing the Domain Name as part of its business strategy. It is however noteworthy that the Respondent did not formally acquire the Domain Name (although it may well have had an option over it by virtue of its acquisition of 49% of the shares in Mosaic Tiles) until August and did not launch a website linked to the Domain Name until shortly after that.

7.12. There is also no evidence that the Respondent was making preparations to launch its site at the Domain Name despite the Respondent's assertion to the contrary. What is however true is that the Respondent was in the period from about March to about August 2010 in the process of acquiring and developing a whole range of domain names/websites which related to tiles. These included websites such as www.premiumstone.co.uk, www.tilemagic.co.uk and

www.tilingHQ.co.uk, the latter of which had in fact been first launched in March 2008.

7.13. The Complainant makes no complaint about these domain names. The thrust of its case (as best set out in its Reply) is that there will inevitably be confusion between the Respondent's use of the Domain Name and the Complainant's own site at www.buytiles.com. The Complainant submits that this is particularly likely given the Complainant's recent high profile advertising campaign on the radio where other visual elements of its brand have been absent and the business has been largely promoted under the name buytiles.com. There is however no evidence of actual confusion between the site operated by the Respondent at the Domain Name and the Complainant's business.

7.14. The Complainant (again in its Reply) argues that the Respondent in fact originally set up its site at the Domain Name with the same colours as the Complainant's site but then after a complaint from the Complainant changed those colours. There is however no evidence that this actually happened and the annex which the Complainant has produced to evidence this does not show anything of the sort.

7.15. In short, there is a lack of hard evidence on both sides. The Complainant has not been able to point to any actual instances of confusion, neither has it been able to point to any concrete evidence that suggests that the Respondent was up to no good in launching a site at the Domain Name. I should stress that although neither are necessary ingredients of the Complainant proving its case, evidence of one or both would have been extremely useful in assisting me to reach a Decision. Similarly, the Respondent has only made the barest of assertions that by the time it found out about the Complainant and buytiles.com it had made demonstrable preparations to launch a website at the Domain Name. It has produced no evidence of what those preparations were or indeed of its interest in the Domain Name prior to formally acquiring it.

7.16. Ultimately, however, I think what is fatal to the Complainant's case is the descriptive nature of the Domain Name. Whilst I have found, on the balance of probabilities, that the Complainant has Rights in a name or mark which is identical or similar to the Domain Name there is no getting away from the fact

that the Domain Name is very descriptive. In the absence of any evidence to the contrary I am therefore, on the balance of probabilities, prepared to believe that the Respondent simply developed its site at the Domain Name because the Domain Name is a good domain name to have if you are going to sell tiles. Indeed it had been originally registered (albeit not by the Respondent) some time before the Complainant called itself buytiles.com for this very reason.

7.17. Further the Respondent's use of the Domain Name is consistent with the other domain names which the Respondent uses in this field which either directly relate to its businesses or are similarly good domain names to have for someone selling tiles. Put another way, having adopted such a descriptive trading style/domain name the Complainant should not really be surprised when other companies in the same field adopt trading styles/domain names which are close.

7.18. It follows that I do not think that either the Respondent's acquisition of the Domain Name or its subsequent use to point to a site advertising its tiles and tile accessories takes unfair advantage of or is unfairly detrimental to the Complainant's Rights. On the balance of probabilities I therefore find that it is not an Abusive Registration.

8. DECISION

Whilst the Complainant has established Rights in a name that is identical or similar to the Domain Name, it has not proved on the balance of probabilities that the Domain Name in the hands of the Respondent is an Abusive Registration. Accordingly, I direct that no action be taken in respect of the Complaint.

Nick Phillips
4th January 2011

ANNEX A

Complaint

What Rights are you asserting?

Tiles Porcelain Ltd bought the domain name of www.buytiles.com on 19th Oct 2009. We went live with our website www.buytiles.com on 10th March 2010. We were awarded the Trade Mark Registration Certificate of [buytiles.com](http://www.buytiles.com) on 28th May 2010. (see www.buytiles.com). We traded as [buytiles.com](http://www.buytiles.com) from 28th May 2010. We spent over £30,000.00 on radio advertising in the N/E from June 1st 2010 - Sept 1st 2010 and are continuing to spend these same amounts to the end of the year and next year concentrating on our brand of the banana holding a tile with the slogan "Bananas about tiles" [buytiles.com](http://www.buytiles.com) (see attached). We have used yellow and black in our logos both at [buytiles.com](http://www.buytiles.com) and tilesporcelain.co.uk and as from today buytiles.co.uk have been using a very similar logo/colour to both of our websites.

Travis Perkins own Tilesgiant. A company part owned by Tile Giant is called: Verona Stone Company, Project House, Armley Road, Leeds, LS12 2DR, www.veronastonecompany.com. The MD of Verona is Adrian Hinchliffe 0113 244 4984 and he owned the domain name www.buytiles.co.uk who then sold it to Tile Giant's other part owned company in August 2010 called Tilehq: www.tilehq.co.uk/content/Contact_Us.html, Tile HQ Ltd, Anchor Road, Longton, Stoke on Trent, Staffordshire, ST3 1NF. The MD of Tile HQ is a guy called Colin Hampson (see) <http://www.buildersmerchantsjournal.net/news/news.asp?id=6198> who is recognised as the E Commerce Manager for Tile Giant.

Why is the domain name an Abusive Registration?

I have had meetings with both Adrian from Verona and Nick Rose from Tile Giant regarding numerous business issues from February 2009. My business partner even made Adrian an offer for his domain name www.buytiles.co.uk whom had this from year 2000 but was and had been undeveloped till Sept/Oct 2010 (see the email offer below):

From: Jason Colling [mailto:info@tilesporcelain.co.uk]

Sent: 25 June 2010 13:50

To: 'adrian@veronastonecompany.com'

Subject: buytiles.co.uk

Hi Adrian,

Nice talking to you,

I'll make you an offer £1000 for buytiles.co.uk

Cheers

Jason Colling

Website: Tilesporcelain.co.uk

Email:Info@tilesporcelain.co.uk

Tel: 0191 378 3896

They have obviously acquired the domain name www.buytiles.co.uk under Tile HQ and started developing it because they are very very aware of our advertising campaign both radio, internet, showroom and huge warehouse with massive signage showing our logo incorporating the buytiles.com thus trading under the name www.buytiles.com. They are passing off on our Trade Mark and success and the fact of our internet presence and reputation making it look like they are us even using the same colours in there logo yellow and black.

I would never had developed the website www.buytiles.com if www.buytiles.co.uk website had already been in use and developed selling tiles. They knew of our position and purposely developed www.buytiles.co.uk to win some of our business into fooling people they are dealing with us when actually they are dealing with them. I know that if they had never known about us then none of this would be happening and Adrian from Verona would be sitting on his domain name www.buytiles.co.uk undeveloped.

Adrian (MD) from Verona Stone Company purposely transferred/sold the domain name of www.buytiles.co.uk to Colin Hampson (MD of www.tilehq.co.uk) and who is the internet development manager for Tile Giant/Travis Perkins, solely to go head to head and piggy back/passing off to that of ALL our hard work at Tiles Porcelain Ltd trading as www.buytiles.com

Adrian offered us the sale of www.buytiles.co.uk for £10,000.00 after we had offered £1000,00 whom then without notice transferred ownership to Tile HQ under the

command of Mohammed Iqbal MD for Tile Giant that is owned by Travis Perkins. Adrian laughed and joked about him owning the domain name www.buytiles.co.uk knowing we had run a huge marketing campaign surrounding www.buytiles.com and that our premises were all called [buytiles.com](http://www.buytiles.com), this was in June 2010 when myself Paul Glendenning and my business partner Jason Colling visited Adrian at Verona Stone at Leeds. At this time www.buytiles.co.uk was undeveloped and not in use.

The relationship between us, Tile Giant (Mohammed Iqbal) and Verona Stone (Adrian) are that they sometimes supply us with natural stone.

Approximately 1 year ago Mohammed Iqbal had sent his Operations Director Nick Rose to see me to evaluate actually purchasing our business. Nothing concluded from this meeting as at the time we were in our infancy with no infrastructure based on a farm in the middle of Crook Co Durham. As soon as we had relocated in May/June 2010 at our huge new warehouse 18,000 sq feet and showroom www.buytiles.com employing 13-15 members of staff which they knew about we shortly started getting visited by one of Adrians Sales reps from Verona Stone. At this point we did not know that they had any links with Tile Giant, but once we confirmed knowing this it all made sense that they were merely checking us out and watching our development stages in the eyes of Tile Giant Mohammed Iqbal MD. Our organization has grew at a rate thought impossible within any industrial sector in the current economic climate and my view is that we have raised eye brows and created fear not only locally but nationally because tiling shops are going out of business every day. Other companies not to mention names equally as huge as tile giant if not larger have also visited our branch but none have stooped so low as to copy and straddle our success.

We have the trade mark of www.buytiles.com and our business trades as buytiles.com, their business concerning www.buytiles.co.uk is purely to pass off as us, strange they ask the MD of Tile HQ to develop www.buytiles.co.uk instead developing his own website www.tilehq.co.uk as the e commerce manager of Tile Giant/Travis Perkins based on my information.

All the business partners here at www.buytiles.com are left feeling very upset and astonished to think a huge network tiling corporation headed under Tile Giant on behalf of Travis Perkins decides to pull a cheap unethical stunt of this nature. I seriously doubt there professionalism and competence in internet development by

having to do this to a NEW established exciting and dynamic successful company that we run here at www.buytiles.COM currently with the turnover of approx over £4-5m per annum achieved within 3 years of starting our business. Tile Giant know this and understand this and I almost find this situation hilarious if I was looking in from an outside perspective witnessing how they aim to jump on our backs.

ANNEX B

Response

Travis Perkins plc (“Travis Perkins”) and its subsidiary companies (“Travis Perkins Group”) wholly refute the claims made by Tiles Porcelain Limited (“Tiles Porcelain”) that it has rights in “buy tiles” (and will deal with each of them individually below (sections 3-5) as well as correcting factual inaccuracies in and responding to their statement (section 6)). Section 2 of this statement deals with Travis Perkins Group strategy regarding its tile business, which shows in detail why the Domain is not and never has been an Abusive Registration.

Rights

Tiles Porcelain does not have rights in respect of a name or mark which is identical or similar to the Domain. It does not own any rights in “buy tiles” as it is both generic and descriptive. It does not distinguish Tile Porcelain’s goods or services from those of anyone else. Tiles Porcelain has not acquired distinctiveness through use, as they do not trade as “buy tiles” but use these words as a small part of their overall branding. Further, their website, www.buytiles.com, only went live in March 2010, which, even if the words “buy tiles” were distinctive to them (which is denied), this short timeframe is insufficient to be able to gain any form of rights in them.

In addition, the trade mark that Tiles Porcelain seeks to rely on is not for “buy tiles”. It is a colour device mark of a yellow banana with the words “buytiles.com we bananas bout tiles”. The words “buy tiles” are not the distinctive part of the registration, but descriptive. The coloured image of a banana is the distinctive element. As such, any rights that Tiles Porcelain may have are not being infringed by Travis Perkins Group’s use of the Domain. Travis Perkins Group therefore has the legitimate right to use the Domain. We refer you to sections 3 and 4 of this submission for additional detail.

Abusive Registration

The Domain, in the hands of Travis Perkins Group, is not and never has been an Abusive Registration. In particular:

- a. The Domain was not bought for the purpose of selling, renting or otherwise transferring the Domain to Tiles Porcelain or to a competitor of it. It was bought as part of a wider strategy of the Travis Perkins Group to develop and grow its retail and online offering of tiles and tile related products. See section 2 below for more information.
- b. The Domain was not bought as a blocking registration against a name or mark to which Tiles Porcelain may have rights. It has been registered for 10 years, whereas Tile Porcelain's trade mark was only registered in May 2010 (and as detailed above, the Domain does not infringe the trade mark).
- c. The Domain was not bought for the purpose of unfairly disrupting the business of Tiles Porcelain. As detailed above, the Domain was registered 10 years ago. It was bought by Travis Perkins Group as part of its long term strategy of developing its retail tile business, both through physical stores and transactional online websites. Further, by its own admission, the Domain has no effect on Tile Porcelain's business, see section 7 for further information.
- d. There is no confusion or likelihood of confusion that the Domain is registered to, operated or authorised by or otherwise connected with Tiles Porcelain. Tiles Porcelain has no rights in the words "buy tiles" and the general public would not associate these words with Tiles Porcelain. As such, there is no confusion (or likelihood of it) whatsoever. In addition, the content, colours, images and purpose of the websites are different which further prevents any form of confusion, see sections 3 and 4 for further information.
- e. Travis Perkins (and its predecessors) used and/or made demonstrable preparations to use the Domain in connection with a genuine offering of goods before becoming aware of Tile Porcelain's concerns. The Domain was registered 10 years ago and bought for the purpose of developing it. As detailed at section 2 below, it has been a long term strategy of Travis Perkins to develop its tile business, including developing the Domain into a transactional website, which it has done.
- f. The Domain is generic and/or descriptive relating to the sale of tiles and Travis Perkins is making fair use of it. Travis Perkins and its predecessors

have always made fair use of the Domain, in that it has been developed and is being used for the sale of tiles and tile related products.

Travis Perkins Strategy: 2007 - Present

The strategy of the Travis Perkins Group is evidenced by the timeline below, which was to develop and grow a tile business, both with physical stores and online transactional websites. Travis Perkins has made a series of company acquisitions and investments since 2007 in accordance with the strategy but this Response concentrates on its e-commerce strategy.

At no point did the Travis Perkins Group single out Tiles Porcelain or conduct its business in a way that “piggy backed” off Tiles Porcelain. The Travis Perkins Group’s strategy, subsequent investments and activities predate its knowledge of Tiles Porcelain’s registration and use of the domain name “buytiles.com”, which it only took ownership of in October 2009.

Key events that formed part of the strategy are as follows:

14 November 2007

Event: Travis Perkins acquired 100% of Tile Giant Limited (“Tile Giant”).

Intention: Expand into the tiles retail market through the acquisition of Tile Giant (including its 29 stores across the UK).

It was also the intention to expand into the online retail tiles market and Travis Perkins Group was actively looking for companies to acquire in order to develop into e-commerce, which sat alongside the integration of the 29 Tile Giant stores into Travis Perkins Group.

31 July 2009

Event: Travis Perkins acquired 100% of Tile HQ Limited (“Tile HQ”).

Intention: Part of Travis Perkins Group’s intention was to develop transactional websites, each with a slightly different offering (in terms of types of tiles and delivery options) to appeal to different types of customers. Travis Perkins acquired Tile HQ because of this company’s expertise in the on-line market and its newly developed transactional website (www.tilehq.co.uk), which Tile HQ launched in March 2008. It was the intention that the Tile HQ website could be used as a platform and then be

adapted for Tile Giant and other websites that Travis Perkins Group intended to develop.

Tile HQ manages the e-commerce offering in relation to retail tiles for the Travis Perkins Group. Colin Hampson joined Travis Perkins from Tile HQ and it was agreed that after the integration of Tile HQ into Tile Giant, Colin Hampson would concentrate his efforts on the development of Tile Giant's website and thereafter the development of other websites. It was also Colin Hampson's responsibility to look after the whole e-commerce operation for Tile Giant and deal with all sales generated online (including stock management, picking, packing, organising delivery, customer relations etc.) In order to achieve this Travis Perkins invested in an additional employee to assist Colin Hampson in August 2009 and another employee in November 2009.

September 2009

Event: Development work commenced on www.tilegiant.co.uk, as planned.

02 December 2009

Event: Travis Perkins acquired 49% of Mosaic Tile Company Limited (which is also known as 'Verona Stone Company') ('Mosaic'), with a view to potentially acquiring the remainder of Mosaic in due course.

Intention: It was Travis Perkins Group's intention to develop a number of domains following the acquisition of Mosaic including www.premiumstone.co.uk and www.buytiles.co.uk (and others), which were owned by Adrian Hinchliffe (the main shareholder of Mosaic) and other domains which were not owned by Adrian Hinchliffe. The Travis Perkins Group is investing in and working on developing other domains from Adrian Hinchliffe stemming from the acquisition of Mosaic.

The priority at the time was to develop the Tile Giant website first and to then use that website (together with the Tile HQ website) as the platforms for www.premiumstone.co.uk, www.buytiles.co.uk, www.tilemagic.co.uk, www.tilinghq.co.uk and other website domains.

It was Travis Perkins Group's intention for domain names belonging to Adrian Hinchliffe at the time of the acquisition of Mosaic to be transferred to one of Travis Perkin's Group companies in due course (which is what happened and will continue to happen with the others).

11 March 2010

Event: www.tilegiant.co.uk transactional website went live.

22 March 2010

Event: Development work commenced on www.premiumstone.co.uk. Simultaneous background development work also commenced on www.tilemagic.co.uk and www.buytiles.co.uk.

Intention: 'Premiumstone' was evaluated and considered a business priority in terms of website development at the time Mosaic was acquired because of the 'premiumstone' registered Trade Mark, which Travis Perkins Group was eager to protect.

25 March 2010

Event: www.premiumstone.co.uk domain was transferred to Tile HQ.

Intention: The transfer of the domain name was envisaged in December 2009 when Mosaic was acquired.

21 May 2010

Event: www.premiumstone.co.uk transactional website went live.

Intention: This was part of the business strategy in December 2009 when Mosaic was acquired and priority was given to it in March 2010 after the Tile Giant website was finished.

15 June 2010

Event: www.tilemagic.co.uk transactional website went live.

Intention: The Tile Magic website was next in the list of priorities stemming back to the acquisition of Mosaic in December 2009.

3 July 2010

Event: Development work commenced on www.tilinghq.co.uk.

Intention: The Tiling HQ website was next in line for development pursuant to the priorities and business strategy established in December 2009 when Mosaic was acquired.

24 August 2010

Event: www.buytiles.co.uk domain was transferred to Tile HQ.

Intention: The transfer of the domain name was envisaged in December 2009 when Mosaic was acquired.

25 August 2010

Event: www.buytiles.co.uk transactional website went live.

Intention: The Buy Tiles website was next in the list of priorities stemming back to the acquisition of Mosaic in December 2009.

August 2010

Event: A fourth employee was taken on by Travis Perkins into Tile HQ.

Intention: Further investment in the e-commerce operation was needed in order to assist with the development of websites and deal with the on-line sales generated by all the live transactional websites managed by Tile HQ (including www.tilehq.co.uk, www.tilegiant.co.uk, www.premiumstone.co.uk, www.tilemagic.co.uk, and www.buytiles.co.uk. This was envisaged as part of the strategy.

15 September 2010

Event: A fifth employee was taken on by Travis Perkins into Tile HQ.

Intention: A fifth employee was taken on in the e-commerce team at Tile HQ to primarily assist with website development, in accordance with the business strategy.

1 October 2010

Event: www.tilinghq.co.uk transactional website went live.

Intention: The Tiling HQ website was next in the list of priorities stemming back to the acquisition of Mosaic in December 2009.

November 2010 - Future

The Travis Perkins Group is developing further transactional retail tile websites which were envisaged back in December 2009 when Mosaic was acquired it was expressly agreed that the domains held by Adrian Hinchliffe were to be transferred to Tile HQ in due course (e.g. www.premiumstone.co.uk and www.buytiles.co.uk).

Why the registration and use of the Domain is not Trade Mark infringement:

1. Tiles Porcelain alleges that they have a registered trade mark for 'buytiles.com.' This is incorrect as they own UK trade mark number 2538741

(‘the Mark’) for the image below and the text ‘buy tiles.com we bananas bout tiles’. See Appendix 1 for full details.

2. Tiles Porcelain therefore has no rights in the generic phrase ‘buy tiles’. This part of their Mark lacks distinctiveness and fails to distinguish their goods from those of others. In addition, Travis Perkins Group’s use of ‘buy tiles’, is an insignificant part of the Mark and is not identical or similar to the registration, which is a colour device mark. Further, the words ‘buy tiles’ are not the dominant part of the Mark and Tiles Porcelain have not acquired distinctiveness through use of the phrase ‘buy tiles’ whatsoever.
3. The Mark was registered in May 2010, ten years after registration of the Domain.
4. In light of the above, Travis Perkins Group is not infringing the Mark.

Why the registration and use of the Domain does not constitute passing off

1. The content of the Domain was based on the Tile Giant, Tile HQ, Tile Magic and Premium Stone website platforms that were developed before it. Please see Appendices 3, 5, 6, 7 and 8. The content, images, colours and logo of the Travis Perkins Group websites are not similar or identical to that of Tiles Porcelain’s website and therefore have not and could not cause the public to create an association between the Domain and buytiles.com and/or Travis Perkins Group and Tiles Porcelain.
2. The phrase ‘buy tiles’ in the Domain does not create a misrepresentation to the public that Travis Perkins Group is connected to or associated with Tiles Porcelain in any way, as it is a descriptive and generic phrase that Tiles Porcelain has no rights in. Further, as Tiles Porcelain does not have any rights, it does not have any goodwill in the phrase ‘buy tiles’ and as such, Travis Perkins Group cannot be causing any damage to it.
3. The Travis Perkins Group had a clear business strategy promoting its legitimate business interests in tile offerings to its customers and in no way was this influenced by Tiles Porcelain and their websites.

Why the registration and use of the Domain is not an 'Abusive Registration'

1. The Domain was originally registered by Adrian Hinchliffe on 18 February 2000.
2. Adrian Hinchliffe registered the Domain with a view to developing it and eventually trading from it as he believed that it would be a popular generic term for purchasing tiles in the future. Adrian Hinchliffe consciously and deliberately renewed the Domain every 2 years with the intention of developing it in the future.
3. Adrian Hinchliffe and Mosaic did not have the in-house expertise to develop the Domain (and others that had been acquired with the same intention) until the acquisition of 49% of Mosaic by Travis Perkins. There are a number of other domain names that Adrian Hinchliffe has registered with a view to developing one day which have been taken on by the Travis Perkins Group for development in accordance with its pre-established business strategy and website priorities.
4. The Travis Perkins Group and Adrian Hinchliffe were not aware of Tiles Porcelain's interest in www.buytiles.com until June 2010, when Tiles Porcelain enquired about the sale of the Domain. By this time the business strategy of the Travis Perkins Group was firmly in place and work had already commenced on the development of the Domain.

Response to Tiles Porcelain's statement

Tiles Porcelain Ltd bought the domain name of www.buytiles.com on 19th Oct 2009. We went live with our website www.buytiles.com on 10th March 2010

Travis Perkins Group did not know that Tiles Porcelain had acquired www.buytiles.com in October 2009 and further did not know that they launched their website in March 2010. Mosaic (and the Domain) was purchased in December 2009 as part of the Travis Perkins Group strategy that began taking effect in 2007. By March 2010, the Travis Perkins Group was well underway with the development of its e-commerce offering, including in relation to the Domain.

<p>We traded as buytiles.com from 28th May 2010. We spent over £30,000.00 on radio advertising in the N/E from June 1st 2010 - Sept 1st 2010 and are continuing to spend these same amounts to the end of the year and next year concentrating on our brand of the banana holding a tile with the slogan "Bananas about tiles" buytiles.com</p>	<p>The Travis Perkins Group was not aware of this advertising campaign. However, we now understand that this radio advert was aired on Real Radio North East, which covers much of the North East (Durham, Tyne & Wear and Teeside). Our business is focussed across the UK and not in one particular area.</p> <p>By Tiles Porcelain's own admission, their slogan is 'Bananas about tiles buytiles.com' this does not and could not be confused by the Domain and our offering to customers.</p>
<p>We have used yellow and black in our logos both at buytiles.com and tilesporcelain.co.uk and as from today buytiles.co.uk have been using a very similar logo/colour to both of our websites.</p>	<p>The appearance of the Domain (or other Travis Perkins Group websites) is not similar to www.buytiles.com and we refer you to Appendices 2, 3, 4, 5, 6, 7, 8 and 9 and each website (including the Domain). The layout, content, images, colours and logos of the Domain are different and it is transactional, unlike Tiles Porcelains' which is a static catalogue site where all transactions are completed over the telephone.</p>
<p>Travis Perkins own Tilesgiant. A company part owned by Tile Giant is called: Verona Stone Company, Project House, Armley Road, Leeds, LS12 2DR, www.veronastonecompany.com</p> <p>The MD of Verona is Adrian Hinchliffe 0113 244 4984 and he owned the domain name www.buytiles.co.uk who then sold it to Tile Giant's other part owned company in August 2010 called Tilehq:</p> <p>www.tilehq.co.uk/content/Contact_Us.html, Tile HQ Ltd, Anchor Road, Longton, Stoke on Trent, Staffordshire, ST3 1NF</p> <p>The MD of Tile HQ is a guy called Colin Hampson (see) http://www.buildersmerchantsjournal.net/news/news.asp?id=6198 who is recognised as the E Commerce Manager for Tile Giant.</p>	<p>Adrian Hinchliffe did not sell the Domain to Tile HQ in August 2010. In December 2009 when Travis Perkins acquired 49% of Mosaic a plan was set in place at that time, and as part of the transaction, for a number of domain names to be transferred to Tile HQ (the company that manages the e-commerce offering on behalf of Tile Giant). The Domain was one of a number of domains that were envisaged to be developed by Tile Giant through Tile HQ.</p>
<p>I have had meetings with both Adrian from Verona</p>	<p>Nick Rose met with Tiles Porcelain once in</p>

<p>and Nick Rose from Tile Giant regarding numerous business issues from February 2009.</p>	<p>February 2010 (not February 2009), when Tile Giant made an initial enquiry about potentially acquiring Tiles Porcelain. However, the set up on the farm and lack of apparent lack of health and safety controls and inflated valuation expectations meant that Nick Rose was not prepared to go any further and both parties walked away.</p>
<p>Adrian Hinchliffe has had two meetings with Tiles Porcelain, in June and July 2010 (not February 2009). The purpose of those meetings was to sell stone products and sealer to Tiles Porcelain, as evidenced by the emails below between Ralph Jones (who works for Adrian Hinchliffe at Mosaic) and Jason Colling (who works at Tiles Porcelain).</p>	<p>At no point was the question of the Domain brought up during those meetings.</p> <p>First Meeting: June 2010 at Adrian Hinchliffe's office in Leeds</p> <p>Paul from Tiles Porcelain met with Adrian Hinchliffe to discuss purchasing stone products and organising a display to be placed in Tiles Porcelain's store in Durham. Further to this meeting the following email was sent, which led on to the second meeting.</p> <p>From: Ralph Jones [mailto:ralph@romanatilecompany.com] Sent: 06 July 2010 16:32 To: 'info@tilesporcelain.co.uk' Cc: 'paul@buytiles.com'; Adrian Hinchliffe Subject: Verona Samples</p> <p>Good Afternoon Guys,</p> <p>I have put together a full range of samples you requested and also the samples you require for display.</p> <p>The Price of these is Â£1131.00 inc vat. Please can you contact me on 0113 2444984 to make payment so that I can release the order.</p> <p>I have tried ringing both of you...but I guess the signal on the golf course is not too good!</p> <p>Adrian has told me that he will be visiting you on Thursday if that is ok with you.</p>

Speak to you soon,

Kind Regards

Ralph Jones

Second Meeting: Thursday 8 July 2010 at Tiles Porcelain store in Durham

Adrian Hinchliffe met with Paul from Tiles Porcelain with samples for the display and to talk about pallet deals and pricing for products. The following emails followed on from that second meeting.

From: Ralph Jones
[mailto:ralph@romanatilecompany.com]
Sent: 09 July 2010 13:57
To: 'info@tilesporcelain.co.uk'
Cc: 'paul@buytiles.com'
Subject: New Amended Price List as Agreed with Adrian Hinchliffe

Good Afternoon Jason,

Hope you are well, I have updated your price list to include the pallet deals Adrian has agreed at you meeting yesterday.

Look forward to your first order.

PS.- can you let me have your fax no. so that I can fax you a credit application for - just to get you set up on our computer system.

Thanks very much

Kind Regards

Ralph

From: Ralph Jones
[mailto:ralph@romanatilecompany.com]
Sent: 13 July 2010 15:17
To: 'info@tilesporcelain.co.uk'
Cc: 'paul@buytiles.com';

	<p>'adrian@romanatilecompany.com'</p> <p>Subject: Premium Stone Price List for Sealers</p> <p>Hi Jason,</p> <p>Please find a copy of our price list for our new range of sealers.</p> <p>Looking at these prices you will probably be ordering a container or two!</p> <p>Have a good day.</p> <p>Kind Regards</p> <p>Ralph</p>
<p>My business partner even made Adrian an offer for his domain name www.buytiles.co.uk whom had this from year 2000 but was and had been undeveloped till Sept/Oct 2010 (see the email offer below):</p> <p>From: Jason Colling [mailto:info@tilesporcelain.co.uk]</p> <p>Sent: 25 June 2010 13:50</p> <p>To: 'adrian@veronastonecompany.com'</p> <p>Subject: buytiles.co.uk</p> <p>Hi Adrian, Nice talking to you, I'll make you an offer Â£1000 for buytiles.co.uk Cheers</p> <p>Jason Colling Website: Tilesporcelain.co.uk Email: Info@tilesporcelain.co.uk Tel: 0191 378 3896</p> <p>Adrian offered us the sale of www.buytiles.co.uk for £10,000.00 after we had offered £1000,00 whom then without notice transferred ownership to Tile HQ under the command of Mohammed Iqbal MD for Tile Giant that is owned by Travis Perkins.</p> <p>Adrian laughed and joked about him owning the</p>	<p>The Domain remained undeveloped by Adrian Hinchliffe because Mosaic did not have the expertise to develop it until the acquisition of Mosaic by Travis Perkins in December 2009.</p> <p>Adrian Hinchliffe received a telephone call from Jason Colling in June 2010 enquiring about purchasing the Domain. Adrian Hinchliffe confirmed that he did not know if he could sell the Domain, as he could not remember if the Domain was one of the websites that was in the process of being transferred to Travis Perkins Group as part of the acquisition on December 2009 and would need to check.</p> <p>Adrian then received the email sent by Jason Colling.</p> <p>Adrian Hinchliffe called Jason Colling back at the end of June 2010 and (after double-checking) confirmed that he could not sell it to Tiles Porcelain. He also commented that if he could sell it (which he could not) the price would have been closer to £10,000. Nothing more was said on the subject and Mosaic continued to trade with Tiles Porcelain, as evidenced by the emails above.</p>

<p>domain name www.buytiles.co.uk knowing we had run a huge marketing campaign surrounding www.buytiles.com and that our premises were all called buytiles.com, this was in June 2010 when myself Paul Glendenning and my business partner Jason Colling visited Adrian at Verona Stone at Leeds. At this time www.buytiles.co.uk was undeveloped and not in use.</p>	
<p>They have obviously acquired the domain name www.buytiles.co.uk under Tile HQ and started developing it because they are very very aware of our advertising campaign both radio, internet, showroom and huge warehouse with massive signage showing our logo incorporating the buytiles.com thus trading under the name www.buytiles.com.</p>	<p>For the reasons detailed and evidence provided in this Response, this statement is wholly refuted by the Travis Perkins Group.</p>
<p>I would never had developed the website www.buytiles.com if www.buytiles.co.uk website had already been in use and developed selling tiles. They knew of our position and purposely developed www.buytiles.co.uk to win some of our business into fooling people they are dealing with us when actually they are dealing with them. I know that if they had never known about us then none of this would be happening and Adrian from Verona would be sitting on his domain name www.buytiles.co.uk undeveloped.</p>	<p>Adrian Hinchliffe and the Travis Perkins Group did not know of Tiles Porcelain's position with www.buytiles.com until the end of June 2010, by which time the business strategy was well established and work had already commenced on the Domain. Investment had already been made in employees within the business to undertake this work.</p>
<p>Adrian (MD) from Verona Stone Company purposely transferred/sold the domain name of www.buytiles.co.uk to Colin Hampson (MD of www.tilehq.co.uk) and who is the internet development manager for Tile Giant/Travis Perkins, solely to go head to head and piggy back/passing off to that of ALL our hard work at Tiles Porcelain Ltd trading as www.buytiles.com</p>	<p>The Travis Perkins Group and Adrian Hinchliffe wholly refute these claims for the reasons detailed above.</p>
<p>Approximately 1 year ago Mohammed Iqbal had sent his Operations Director Nick Rose to see me to evaluate actually purchasing our business. Nothing concluded from this meeting as at the time we were in our infancy with no infrastructure</p>	<p>This is the meeting in February 2010 that has been detailed above.</p>

<p>based on a farm in the middle of Crook Co Durham.</p>	
<p>As soon as we had relocated in May/June 2010 at our huge new warehouse 18,000 sq feet and showroom www.buytiles.com employing 13-15 members of staff which they knew about we shortly started getting visited by one of Adrian's Sales reps from Verona Stone. At this point we did not know that they had any links with Tile Giant, but once we confirmed knowing this it all made sense that they were merely checking us out and watching our development stages in the eyes of Tile Giant Mohammed Iqbal MD. Our organization has grown at a rate thought impossible within any industrial sector in the current economic climate and my view is that we have raised eye brows and created fear not only locally but nationally because tiling shops are going out of business every day.</p>	<p>The purpose of the visits by the sales rep at this time was to develop the business relationship (which is what subsequently happened) and for no other reason.</p>
<p>Other companies not to mention names equally as huge as tile giant if not larger have also visited our branch but none have stooped so low as to copy and straddle our success.</p> <p>All the business partners here at www.buytiles.com are left feeling very upset and astonished to think a huge network tiling corporation headed under Tile Giant on behalf of Travis Perkins decides to pull a cheap unethical stunt of this nature. I seriously doubt there professionalism and competence in internet development by having to do this to a NEW established exciting and dynamic successful company that we run here at www.buytiles.COM currently with the turnover of approx over Â£4-5m per annum achieved within 3 years of starting our business. Tile Giant know this and understand this and I almost find this situation hilarious if I was looking in from an outside perspective witnessing how they aim to jump on our backs.</p>	<p>The Travis Perkins Group has always acted with legitimate business interests and a defined business strategy and denies all the allegations made against it.</p>

Abusive Registrations by Tiles Porcelain

Adrian Hinchliffe (whose company 'Verona Stone Company' trades from www.veronastonecompany.co.uk) received an abusive telephone call from Paul at Tiles Porcelain on 14 October 2010 in which Paul stated that he had registered www.veronastone.co.uk, www.tilesgiant.co.uk and www.tileshq.co.uk and would put the group 'out of business' if he did not transfer www.buytiles.co.uk to him. Please see Appendix 10, 11 and 12 which shows that Tiles Porcelain registered the domains www.veronastone.co.uk on 11 August 2010, www.tilesgiant.co.uk on 30 April 2010 and www.tileshq.co.uk on 11 August 2010.

On 15 October 2010, Paul from Tiles Porcelain called Mohammed Iqbal (Managing Director of Tile Giant). Mohammed Iqbal challenged Paul about his abusive language and behaviour the day before towards Adrian Hinchliffe during the telephone call, to which Paul apologised. Mohammed Iqbal asked why Paul was concerned about www.buytiles.co.uk as Paul's brand is completely different and Paul stated that the Domain was having no effect whatsoever on his business. To this end please see Google 'buytiles' search data (Appendices 14 and 15) which shows that the search stream for 'buytiles' has been constant (and on the decline) since 2004. The conversation ended amicably. However, It has been brought to our attention subsequently that Tiles Porcelain has also registered the domain www.tilegiants.co.uk on 11 August 2010 (please see Appendix 13.). Travis Perkins Group reserves its rights to take action against these domain names and any others.

It is Travis Perkins Group's contention that Tiles Porcelain is the only company who has abusively registered domain names similar to Travis Perkins Group companies and not the other way round.

ANNEX C

Reply

Reply to Response by Travis Perkins in respect of buytiles.co.uk (the 'Domain')
This reply addresses matters raised by Travis Perkins Group ('Travis Perkins') in their response dated 9 November (the "Response"). Section 2 deals with Travis Perkin's claim that Tiles Porcelain's has no rights in the Domain; section 3 deals with Travis Perkin's claim that the Domain is not an Abusive Registration; and section 4 responds to certain other matters.

Executive Summary

The essence of Travis Perkins' Response appears to be that:

1. Tiles Porcelain have no rights in respect of a name or mark which is identical or similar to the Domain, as the words "buy tiles" are generic and descriptive;
2. The Domain in the hands of Travis Perkins is not an Abusive Registration because; it was registered 10 years ago; it was acquired by Travis Perkins as part of a strategy to grow its online business; and Travis Perkins had made demonstrable preparations to use the Domain Name before Travis Perkins were aware of Tiles Porcelain's concerns;
3. It is unlikely that people will be confused into believing the Domain is connected with Tiles Porcelain's business.

Tiles Porcelain's reply is that:

1. Tiles Porcelain owns rights in the brand 'buytiles.com' because; it has traded under the name since 28 May 2010; it is a key component of a registered trade mark; it has invested heavily in advertising featuring the brand; the words 'buy tiles' are not generic/ descriptive when used in the context of a domain name which is also functions as Tiles Porcelain's trading name and which has been heavily promoted.
2. Although the Domain was registered 10 years ago it was not used until after Tiles Porcelain had invested in promoting the 'buytiles.com' brand and had

discussed buying the Domain. Very soon after those discussions ownership of the Domain was transferred and the Domain put into use. Although Travis Perkins may have been developing other websites, they have not produced any documentary evidence demonstrating that they were preparing to use the Domain before Tiles Porcelain adopted the buytiles.com brand.

- 3 There is a very strong likelihood that the Domain will be confused with Tiles Porcelain's domain name and trading name of buytiles.com given that; Tiles Porcelain's brand has been promoted in radio advertising where other visual features are absent and listener recollections may be imperfect; and the branding used on the Domain is similar to that used by Tiles Porcelain.
- 4 For the reasons detailed above the Domain is an Abusive Registration in the hands of Travis Perkins because it has been ACQUIRED and/or USED in manner which takes unfair advantage of Tile Porcelain's rights in the 'buytiles.com' brand.

Travis Perkins assert that Tiles Porcelain does not have rights in respect of a name or mark identical or similar to the Domain because; the name is generic and descriptive; the name does not distinguish Tiles Porcelain's goods and services from those of others; the name has not acquired distinctiveness through use because Tiles Porcelain do not trade as "buy tiles"; and the words 'buy tiles' are not a distinctive element of the registered trade mark owned by Tiles Porcelain (section 1.1, 3.1, 3.2 and Appendix 1 of the Response). In reply Tiles Porcelain would say:

1. Tiles Porcelain has previously provided evidence that it does trade as 'buytiles.com' and has been doing so since 28th May 2010;
2. Tiles Porcelain has also provided evidence that it has invested in excess of £30,000.00 on radio and other advertising in NE England featuring the brand from 1 June 2010 to 1 September 2010;
3. As a consequence of these high profile marketing activities Tiles Porcelain has generated substantial good will in the buytiles.com brand and the brand has become distinctive of Tiles Porcelain through its promotion and use;

4. The buytiles.com trading name/ domain name is the principal means by which customers are encouraged (via advertising) to locate and contact Tiles Porcelain and so does serve to differentiate Tiles Porcelain's business from other businesses;
5. Although Tiles Porcelain's registered trade mark does incorporate various features the trading name "buytiles.com" is the key component of the trade mark, not least because; it is the trading name/ domain name by which customer's will identify/ seek to contact Tiles Porcelain; and it is the only element of the trade mark which is relevant for the purposes of radio advertising where the other visual features will be absent;
6. The words 'buy tiles' are not inherently descriptive or generic when used in the context of a domain name which also functions as Tiles Porcelain's trading name and which has been heavily promoted.

For the reasons detailed above Tiles Porcelain owns registered and unregistered rights in the domain name and trading name buytiles.com which it is entitled to protect.

Travis Perkin's claim that the Domain is not an Abusive Registration

Travis Perkins assert that the Domain is not an Abusive registration because; the Domain was registered 10 years ago before Tiles Porcelain adopted the buytiles.com brand name; the Domain was bought as part of a wider business strategy of Travis Perkins to develop its online business; there is no likelihood that the public will be confused that the Domain is connected with Tiles Porcelain; Travis Perkins (and its predecessors) used and/or made demonstrable preparations to use the Domain before they became aware of Tiles Porcelain's concerns; and the Domain is generic and descriptive and Travis Perkins are making fair use of it (see section 1.2, 2 and 5 of the Response). In reply Tiles Porcelain would say:

1. It matters not that the Domain had been registered for 10 years. Tiles Porcelain is not claiming that the Domain is an Abusive Registration because it was 'REGISTERED' in a manner which takes unfair advantage of its rights. Tiles Porcelain claims that the Domain is an Abusive Registration because it

has subsequently been ACQUIRED (i.e. by Tile HQ) and/ or USED in a manner which takes unfair advantage of Tiles Porcelain's rights.

2. Travis Perkins' claim that the Domain was acquired as part of a wider business strategy to develop its online business, appears to be based on the following account of events:

- On 02 December 2009 Travis Perkins acquired 49% of Verona Stone and intended to develop a number of domains owned by the main shareholder (Adrian Hinchliffe) following the acquisition;
- On 22 March 2010 simultaneous work commenced on www.tilemagic.co.uk and www.buytiles.co.uk;
- On 24 August 2010 the Domain was transferred from Verona Stone to Tile HQ (allegedly envisaged in December 2009 when Verona Stone was acquired); and
- On 25 August 2010 the www.buytiles.co.uk website went live.

Based on the information now provided by Travis Perkins in its Response, Tiles Porcelain believes that a more accurate account of events is as follows:

- On 02 December 2009 Travis Perkins acquired 49% of Verona Stone. Adrian Hinchliffe owned a number of domain names (including the Domain), but this was entirely incidental rather than significant to the acquisition;
- On 10 March 2010 Tiles Porcelain's website www.buytiles.com went live and Tiles Porcelain commenced a high profile advertising campaign in relation to the [buytiles.com](http://www.buytiles.com) brand in June 2010;
- On 25 June 2010 Jason Colling of Tiles Porcelain held discussions with Adrian Hinchliffe about buying the Domain which prior to that point in time had been unused and undeveloped. Tiles Porcelain's recent advertising campaign and these discussions alerted Adrian Hinchliffe to the fact that the Domain was valuable to and potentially problematic for Tiles Porcelain;
- Adrian Hinchliffe discussed the matter with his parent company Travis Perkins who said that he should not sell the Domain (this is admitted in section 6 of the Response). Instead Travis Perkins saw an opportunity to

use the Domain to disrupt Tiles Porcelain's business and advertising campaign, to divert internet traffic away from buytiles.com, and possibly also to increase the value of the Domain to Tiles Porcelain;

- The Domain was transferred to Tile HQ on 24 August 2010 (very soon after the June 2010 discussions) and a site went live on the very next day. Tiles Porcelain do not accept that work commenced on www.buytiles.co.uk as early as 22 March 2010 (no documentary evidence of this has been provided) although it believes that work on other websites will have been quickly replicated/ cloned to the Domain in July or August of 2010 (see section 4.1 of the Response).

Tiles Porcelain does not accept that the public are unlikely to be confused into believing that the Domain is connected with Tiles Porcelain. The ease with which the Domain buytiles.co.uk can be confused with the domain and trading name buytiles.com is evidenced by Travis Perkin's own Response (see point 5.4). Confusion is particularly likely given that the buytiles.com brand has been heavily promoted on radio where other visual elements of the branding are absent and where listener recollection of may be imperfect. In addition, Travis Perkins have actively encouraged confusion by using branding on the Domain which is very similar to branding used by Tiles Porcelain and no attempt has been made to use other distinctive elements on the Domain to differentiate it. In particular, homepage published at the Domain is headed simply by the words (and apparent trading name) "buy tiles" and the Domain has used yellow and black branding as well as a logo similar to Tiles Porcelain's websites. In October 2010 Paul Glendenning of Tiles Porcelain spoke with Mohammed Iqbal of Tiles Giant informing him of these similarities and the colours were subsequently changed (to black and white as opposed to black and yellow), but this only confirms that Travis Perkins knew that they have 'overstepped the mark'. www.buytiles.co.uk contact us page address details are also headed by the name of company as Buy Tiles to furthermore confuse matters. (i have enclosed details Ref ABC)

Tiles Porcelain does not accept that work had already commenced on developing the Domain by March 2010. No documented evidence of this has been provided and so Travis Perkins has failed to 'demonstrate' that preparations to use the Domain had been made. The notion that work had commenced on the Domain is also inconsistent with the fact that Adrian Hinchliffe was happy to discuss its sale in June 2010. Tiles Porcelain accepts that Travis Perkins may well have been developing

other sites prior to March 2010 and believes this work was subsequently replicated/ cloned to the Domain. However, that does not amount to 'demonstrable preparations to use the Domain'. Even if work had commenced on the Domain as early as March 2010 this still post-dates Tiles Porcelain's adoption of the brand and the date on which buytiles.com went live. Further, Travis Perkins were well aware of Tiles Porcelain's concerns by at least as early as June 2010 and so should have taken care to avoid the obvious confusion which would result from their use of the Domain. For the reasons detailed in Section 2 Tiles Porcelain does not accept that the words used in the Domain are generic or descriptive and for the reasons set out in this section 3 Tiles Porcelain does not accept that Travis Perkins have made 'fair use' of the Domain.

Other Matters

Tiles Porcelain and Paul Glendenning deny the claim made in section 7 of the Response that he acted in an abusive manner although he would admit to having strong feelings concerning the misuse of the Domain.

It is correct the domain names referred to in section 7 of the Response have been registered but only as a response to the actions of Travis Perkins. They have not been used and Tiles Porcelain is quite prepared to transfer them to Travis Perkins on resolution of its complaint concerning the Domain.