

**DISPUTE RESOLUTION SERVICE**

**D00015876**

**Decision of Independent Expert**

Optegra Global Ltd.

and

Mr Arun Brahma

**1. The Parties:**

Lead Complainant: Optegra Global Ltd.  
Pembroke Hall  
42 Crow Lane  
Pembroke HM19  
Hamilton  
HM19  
Bermuda

Respondent: Mr Arun Brahma  
19 Elm Rd  
Manchester  
M20 6XD  
United Kingdom

**2. The Domain Name(s):**

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

**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.

01 May 2015 12:35 Dispute received  
01 May 2015 13:03 Complaint validated  
01 May 2015 13:15 Notification of complaint sent to parties  
14 May 2015 09:59 Response received  
14 May 2015 09:59 Notification of response sent to parties  
19 May 2015 02:30 Reply reminder sent  
20 May 2015 12:12 Reply received  
20 May 2015 12:14 Notification of reply sent to parties  
20 May 2015 12:15 Mediator appointed  
26 May 2015 10:43 Mediation started  
01 June 2015 16:02 Mediation failed  
01 June 2015 16:02 Close of mediation documents sent  
03 June 2015 08:37 Expert decision payment received

#### **4. Factual Background**

Since 2008, the Complainant and its subsidiaries have operated eye hospitals in the UK and various other countries.

In May 2011, the Complainant started offering permanent lens replacement services under the name "Clarivu". The Complainant has promoted its "Clarivu" brand widely including in newspapers, magazines and the internet.

The Complainant owns various registered trade marks for the word CLARIVU including International Trade Mark No. 11052307 registered 13 August 2010 in classes 10 and 44.

Between January 2010 and early 2013, the Respondent was a consultant ophthalmologist in the Complainant's Manchester hospital. His duties included consulting on, and performing, the Clarivu procedure on the Complainant's patients. His first Clarivu consultation took place on 25 May 2011.

The Respondent registered the Domain Name on 3 June 2012.

The Complainant became aware of the Domain Name in early 2014, at which point it redirected to a website at [www.laservision.co.uk](http://www.laservision.co.uk), which promoted laser eye surgery and other optical services. The website named the Respondent as a "consultant".

On 4 February 2014, the Complainant's trade mark attorneys sent a letter before action to the Respondent requiring, amongst other things, that the Respondent remove the redirect to the Laservision website.

On 12 February 2014, the Respondent's solicitors responded stating that the Respondent had "removed the re-direction from the website [www.clarivue.co.uk](http://www.clarivue.co.uk) to [www.laservision.co.uk](http://www.laservision.co.uk)". The letter further stated: "Our client will not be transferring the ownership/domain name of clarivue.co.uk to your clients. However, should your clients wish to purchase this domain name, then our client would be prepared to consider reasonable offers."

Thereafter the Domain Name resolved to a website hosted by a parking page provider but without any sponsored links.

## **5. Parties' Contentions**

### Complaint

A summary of the Complaint is as follows:

The Domain Name is virtually identical or confusingly similar to trade marks in which the Complainant has rights. It differs only in the addition of a final letter "-e", which has no impact on pronunciation, creates no conceptual difference and is unlikely to be noted by the average consumer. It is a likely and foreseeable misspelling of the Complainant's trade mark.

The Complainant has not at any time authorised the Respondent to register or use a domain name incorporating the Complainant's CLARIVU trade mark.

The Domain Name was registered or otherwise acquired in a manner which, at the time of registration or acquisition, took unfair advantage of and was unfairly detrimental to the Complainant's rights.

The Respondent has used the Domain Name in a way which was inherently likely to confuse people or businesses into believing that the Domain Name was registered to, operated or authorised by, or otherwise connected with the Complainant.

The Respondent was intimately aware of the Complainant's CLARIVU marks when he registered the Domain Name and, by using a similar domain name to divert users to a competing provider of surgical vision correction services in which he had an economic interest, he deliberately set out to confuse internet users seeking the Complainant.

Further or alternatively, Respondent registered the Domain Name primarily as a blocking registration against the Complainant's marks.

The Respondent falsely described himself as a "non-trading individual" on the Nominet Whois.

There is no conceivable legitimate purpose to which the Respondent could put the Domain Name.

Despite responding to the Complainant's letter by agreeing to remove the re-direction and despite advancing no claim to a legitimate right or interest in the Domain Name, the Respondent nonetheless invited the Complainant to make a "reasonable offer". This opportunistic response is evidence that the Respondent registered the Domain Name primarily for the purposes of selling it to the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs.

#### Response

A summary of the Response is as follows:

The Respondent does not intend to respond to Section A of the Complaint (dealing with the Complainant's rights and the Respondent's knowledge thereof) but this is not an admission thereof.

The Respondent accepts that the spelling of the Domain Name is similar to that of the Complainant's mark.

By simply holding the Domain Name, and not using it, there is no detriment to the Complainant save for the loss of a business opportunity. This is not a breach of the Policy.

The Domain Name is not a blocking registration as it is dormant.

The Respondent did not register the Domain Name to sell to the Complainant. "Instead, this was a business that the Respondent was involved in at the time and

registering the domain name allowed him to consider this aspect." The Respondent did not approach the Complainant to buy the Domain Name. The offer was made in response to the threat of legal proceedings. The Respondent has never intended to unfairly disrupt the Complainant's business and, as the website is dormant, it has no effect on the business of the Complainant, which is just trying to gain a business advantage.

The Respondent has not given false details. The Respondent himself is a non-trading individual and his role with Laser Vision Ltd is irrelevant.

There has been a business dispute between the parties. The Complainant is attempting to use the Policy as part of its business strategy against the Respondent. The Respondent is entitled to register the Domain Name. The Domain Name is not being used to re-direct internet traffic and the Respondent has made no gain from ownership of the Domain Name. The Complainant should not be able to obtain a business advantage by relying upon the Policy.

#### Reply

A summary of the Reply is as follows:

The Respondent is not simply holding the Domain Name and not using it. He used it to redirect traffic to a competing site. His past use did take unfair advantage of and was unfairly detrimental to the Complainant and there is a risk that such conduct will be repeated.

This is not a case where the Complainant has "lost a business opportunity" to register the Domain Name and is now seeking to acquire it through the DRS. Rather, the Complainant objects because the Domain Name is confusingly similar to the Complainant's marks and is calculated to, and has in fact been used to, mislead internet users looking for the Complainant's services.

The Respondent was aware of the Complainant's marks when it registered the Domain Name and cannot take refuge in having waited until an objection was raised by the Complainant before offering to sell the Domain Name.

The fact that the Respondent, who previously worked as a consultant for the Complainant, was operating in a competing business that was benefiting from the Respondent's use of the Domain Name is clearly a relevant factor.

The Complainant is aware of no past or present dispute between the parties other than this Complaint. This Complaint has not been brought for any improper purpose, nor to seek any commercial advantage.

The Respondent has put forward no explanation whatsoever as to why it registered a Domain Name that was clearly confusingly similar to the Complainant's marks

## **6. Discussions and Findings**

### Procedural

On 22 June 2015, I issued a notice to the parties under paragraph 13(a) of the DRS Procedure requesting that the Complainant supply a copy of the letter from the Respondent's solicitors dated 12 February 2014 which the Complaint said was included in the annexes but which was not in fact annexed. The Complainant duly supplied the document and the Respondent did not take up my invitation to pass comment thereon.

### General

To succeed, the Complainant has to prove in accordance with paragraph 2 of the DRS Policy on the balance of probabilities, first, that it has rights (as defined in paragraph 1 of the DRS Policy) in respect of a name or mark identical or similar to the Domain Name and, second, that the Domain Name, in the hands of the Respondent, is an abusive registration (as defined in paragraph 1 of the DRS Policy).

### Complainant's rights

The meaning of "rights" is clarified and defined in the DRS Policy in the following terms:

*"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"*

The Complainant clearly has rights in the term CLARIVU arising from its registered trade marks for, and extensive trading activity under, that mark.

The Respondent rightly admits that the Domain Name is similar to the trade mark, differing only by an extra "e" at the end which in no way distinguishes the Domain Name from the trade mark. Indeed the Domain Name is an obvious misspelling of the trade mark.

The Complainant has therefore established rights.

#### Abusive registration

Is the Domain Name an abusive registration in the hands of the Respondent? Paragraph 1 of the DRS 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 was unfairly detrimental to the Complainant's Rights."*

In other words, the Complainant need only establish that either registration or use of the Domain Name was abusive.

Whilst employed by the Complainant, the Respondent registered a domain name which closely reflected the Complainant's trade mark relating to an optical procedure, which he himself was consulting upon, and performing, at the time.

Despite being faced with these potentially incriminating facts and despite his state of mind upon registration of the Domain Name being a crucial consideration, the Respondent has specifically declined to comment on the Complainant's account of the factual background and has offered no explanation at all for his selection of the Domain Name. He simply makes the unclear statement that "... this was a business that the Respondent was involved in at the time and registering the domain name allowed him to consider this aspect."

As the Complainant observes, it is difficult to see what genuine purpose the Respondent could have had for the Domain Name and indeed later events support the conclusion that the Respondent registered the Domain Name with an illicit motive. In particular, the evidence shows that after he left the Complainant's employment, the Respondent redirected the Domain Name to the website of a competitor of the Complainant, from which he derived

financial benefit as a "consultant". The Respondent removed the redirect only in response to the Complainant's letter.

In my view, the conclusion is inescapable that the Domain Name was registered in an abusive manner. That is sufficient to render the Domain Name an abusive registration.

While it is unnecessary to separately consider whether the Domain Name was used abusively, I am satisfied in any case that that was so.

The Respondent focuses his Response on the fact that the Domain Name "is dormant" and he makes no comment about its redirection to the Laservision website. However, the letter from his own solicitor effectively admits that the redirection took place. For the purposes of the DRS, the Respondent cannot escape the consequences of an abusive use of the Domain Name by simply stopping that use. If it were not so, respondents could easily evade and subvert the Policy.

In my view, the Respondent has used the Domain Name in a way which was likely to confuse people or business into believing that the Domain Name was connected with the Complainant in accordance with paragraph 3(a)(ii) of the Policy.

Dealing with the other points raised in the Response, there is no evidence that this case is part of a wider "business dispute" between the parties or that it constitutes some sort of illicit strategy by the Complainant against the Respondent. Nor is there any reason to think that the facts in this case can be characterised as "the loss of business opportunity" and somehow outside the scope of the Policy.

For the reasons stated above, in my view this is a clear case of abusive registration, bolstered by the failure of the Respondent to explain his rationale for registering the Domain Name and to address the fact of redirection of the Domain Name to a business competing with the Complainant from which the Respondent derived a financial benefit.

In these circumstances, I conclude that, on the balance of probabilities, the Domain Name is an abusive registration in that it has been registered and used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights.

## **7. Decision**

I find that the Complainant has rights in a name or mark which is identical to the Domain Name and that the Domain Name is, in the hands of the Respondent, an abusive registration. I therefore direct that the Domain Name, clarivue.co.uk, be transferred to the Complainant.

Signed: Adam Taylor

Dated: 29 June 2015