



NOMINET

DISPUTE RESOLUTION SERVICE

D00017083

Decision of Independent Expert

Bella Parties Ltd

and

Mr Scott Adams

1. The Parties:

Lead Complainant: Bella Parties Ltd
Lees Wood Cottage Fir Tree Hill
Chandlers Cross
Herts
WD34NA
United Kingdom

Respondent: Mr Scott Adams
5 locks Meadow
Dormansland
Surrey
RH7 6AW
United Kingdom

2. The Domain Name(s):

bellaprincessparties.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

10 February 2016 16:38 Dispute received
 11 February 2016 09:38 Complaint validated
 11 February 2016 09:40 Notification of complaint sent to parties
 01 March 2016 01:30 Response reminder sent
 02 March 2016 10:16 Response received
 02 March 2016 10:17 Notification of response sent to parties
 07 March 2016 01:30 Reply reminder sent
 09 March 2016 09:35 Reply received
 09 March 2016 09:39 Notification of reply sent to parties
 09 March 2016 10:53 Mediator appointed
 09 March 2016 12:52 Mediation started
 31 March 2016 15:15 Mediation failed
 31 March 2016 15:16 Close of mediation documents sent
 12 April 2016 02:30 Complainant full fee reminder sent
 15 April 2016 10:42 No expert decision payment received
 20 April 2016 10:00 Expert decision payment received

4. Factual Background

- 4.1 The Complainant provides entertainers for children's parties and organises these. The parties can have particular themes, for example, Disney, Barbie, Bella Party etc. It was incorporated on 4 September 2008 under the registered company name, Bella Parties Limited, and registered the domain name bellaparties.co.uk on 1 May 2008. The Expert checked on line at both Companies House and Nominet 'who is' on 25 April 2016, to verify these dates and facts.
- 4.2 The Respondent is a competitor of the Complainant and offers similar if not identical services. It was originally incorporated as Tinkerbella Parties Limited on 19 November 2014 and changed its company registered name to Bella Princess Parties Limited on 12 August 2015. It registered the Domain Name on 30 April 2015. Again the Expert has verified these facts and dates at Companies House and Nominet 'who is' on 25th April 2016.
- 4.3 It is not clear exactly how long the Respondent has been trading under the Domain Name, nor how long it has been trading in total. It states in its Response that it had used the domain name/website address tinkerbelloparties.co.uk for over 5 years before it changed its corporate name and domain name/website address to incorporate the Domain Name. According to Nominet 'who is', tinkerbelloparties.co.uk was registered on 21 September 2009 and is valid up to expiry as at 21 September 2017. The Expert verified these details via the Nominet 'who is' site and Companies House on 25 April 2016. This is consistent with the Respondent having traded for around 5 years prior to its change of name and registration of the Domain Name, albeit not as an incorporated company.
- 4.4 The Respondent refers to customer feedback at www.bellaprincessparties.co.uk/contact/testimonials. The Expert has reviewed what was posted there as at 25th April 2016. The names tinkerbelloparty, tinkerbello and tinkerbello are used frequently in the customer feedback postings. The first date referred to in these postings is May 2014 but they may date back before that. The first reference to Bella Princess is dated August 2015 with the last reference to Tinkerbello Parties being dated April 2015. Thus the majority of the testimonials are prior to April/August 2015 and so relate to the Respondent under its previous brand and domain – incorporating the words Tinkerbello Parties.
- 4.5 The Respondent's website bears a copyright notice in respect of Bella Princess Parties Limited dated 2015.

5. Parties' Contentions

5.1 The Complaint

The Complainant provides no evidence of use of the name Bella Parties in terms of numbers of customers, turnover, website statistics or indeed even when it started using the name Bella Parties. It asserts that the Respondent's registration of the Domain Name is an Abusive Registration. It states that it has been receiving an increasing number of calls into its office which are causing confusion and misunderstandings between the caller and the Complainant's staff. Some callers think they have called the Respondent and request the Complainant's staff to check they have the party booked. When they say they do not the callers become distressed and concerned that they have not got an entertainer booked for their children's party. It takes some time on the phone until either its staff or the caller realise they are speaking with the Complainant and not the Respondent. It claims under the DRS policy that the similarity of the Domain Name to its company name and domain name mean the Domain Name has been used to confuse internet users. The Complainant requests the Complaint be resolved by way of transfer.

5.2 The Response

The Respondent is the individual registrant of the Domain Name and does not directly use it. The Expert assumes that the Domain Name is being used by a 3rd party, namely Bella Princess Parties Limited, with the Respondent's permission. The Response represents the 3rd party's position in any event and so the Expert considers that this case can therefore be dealt with in the standard way.

5.3 The Respondent disputes the Complainant's allegations of confusion on the following grounds: It uses search engine optimisation ('SEO') techniques which focus on the main key words within the industry. These position its site significantly higher than the Complainants on all relevant key words. Annex 1 provides information on rankings for bellaparties.co.uk/ on key words such as 'Princess Birthday party entertainers'. This gives rankings as follows: 10, 22 and 44. Annex 1.1 provides information on rankings for bellaprincessparties.co.uk for similar key words. The results are rankings of between 1 and 2 with the majority being ranked at number 1. The Respondent asserts that this means that it is impossible for both sites to be displayed in close proximity. A google search for Bella Princess Parties does not show up the Complainant's website until the third position, with the Respondent's contact details clearly being displayed. The Respondent also refers to a separate company named Royal Bella Princess Parties which appears on the google search results and notes that it has not received a similar complaint from them.

5.4 The Respondent also argues that its bookings and follow up contact procedures as well as its location are completely different to those of the Complainant. For example its uses a landline but the Complainant uses a mobile. Its diary system automatically sends out an email confirmation once a booking has both been received and confirmed. This clearly states its name, contact details, website and telephone number. Its strict policy of contacting every booking it receives casts further doubt on any customer potentially contacting the Complainant by mistake. It has never experienced any customer confusion between it and the Complainant. It requests that the Complainant provides evidence as to who the alleged callers were as it keeps detailed records of all booking funds and enquiries received.

5.5 The Respondent also disputes that the Domain Name has been deliberately used to confuse internet users. Its website at the Domain Name was specifically set up to present its business model of providing best in class princess parties. It is generally regarded as one of the leaders within this field as evidenced by its position in Google, national coverage, number of entertainers and extensive customer feedback. In this respect it refers to its website address bellaprincessparties.co.uk/contact/ testimonials. The Expert has commented on this above. It targets a completely different set of key words and refers to Table 1 (the Expert assumes this refers to Annex 1). Its site attracts an average of 200 to 300 sessions a day and refers to Annex 2. Annex 2 is represented as an audience overview and graph. It states that the

Complainant's brand ranking in domain authority is not strong enough to reach the same number of people at its site and that it is an established UK wide company with a national presence and brand where the Complainant is not. Its website bears no similarity to that of the Complainant. It is completely different in brand, content, colour scheme, logo and design. These factors make it extremely unlikely that its site was set up specifically to confuse internet users.

- 5.6** It chose the Domain Name because it thought its previous site at tinkerbelloparties.co.uk might too closely resemble Disney's Tinkerbell and it did not wish to infringe upon any established copyright. The name Bella was already established in its previous brand Tinkerbella. Its Tinkerbella website was established for over 5 years and was one of the leading 'Princess Party' websites, with a strong customer base. A 301 redirect is in place from its previous domain to the Domain Name. It uses the Domain Name in connection with a genuine offering of goods and services and in January alone it received around 250 to 300 bookings and enquiries. It has a very loyal customer base, which continually rebook its service.
- 5.7** It is making fair use of the Domain Name and Bella is a relatively common word in which the Complainant has no legal entitlement to exclusivity. It not only relates to its previous domain name but also its key service which is princess parties.
- 5.8** It can see no evidence from the Complaint of the Complainant's right to the Domain Name other than the Complainant processed the URL www.belloparties.co.uk. It refers to the DRS' own guidelines: "*Parties should also bear in mind that simply showing you have rights to a Domain Name isn't sufficient to win in a DRS complaint. The Complainant must also show the registration or use of a Domain Name is an abusive registration.*"
- 5.9** The Complaint is born more from jealousy than any real legal infringement and the claim made about receiving calls by the Complainant from its customers is fictitious. It is a small business and has worked hard to build a distinct brand in business for itself. There are similarly named sites and companies within its industry as evidenced by Royal Bella Princess Parties referred to above. These companies should build their businesses in a way that distinguishes them.
- 5.10** Annex 3 to the Response relates to belloparties.co.uk and shows a domain authority marking of 13 out of 100 and a page authority of 27 out of 100 with 7 route domains and 15 total links. Annex 3.1 is a similar excerpt on bellaprincessparties.co.uk and shows a domain authority of 14 out of 100 and a page authority of 27 out of 100 with 6 route domains and 39 total links. It also has a far more established social media presence with over 11000 followers on Facebook, as opposed to the Complainant's 769.

5.11 Reply to the Response

The Complainant argues as follows: The Respondent focusses its Response on search engine optimisation (SEO) and key words, stating that they always rank higher and the 2 never appear on the same page. A document it has produced, ([Google seo.bmp.](#)), clearly shows that if a prospective or returning client searches for Bella Parties on Google, which is how many clients find it, both companies do appear on the same page within Google results. The Expert has reviewed the Google page concerned and this is correct.

- 5.12** It also invests in SEO and as both businesses invest more into this and strive for higher rankings, the risk of them being further mistaken for each other increases. This is demonstrated by the Complainant being made aware of the Respondent's company for the first time this year, 2016, following the confusion from new and returning clients. The confusion between both companies is not limited to Google. Both businesses advertise on Net Mums which is arguably the no 1 go to website for parents looking for a local party company. It has over 1.2 million members and 5 million visits. A screenshot ([Net Mums same page.bmp](#)) clearly shows both companies' adverts side by side on the same page. It further states that whilst it does not display a landline number on its website, prospective clients are given both a landline and mobile number as methods of how to reach it. Clients lose telephone numbers

but can remember the name Bella Parties and that they enquired about a Princess party with it.

- 5.13** The Respondent is well aware that princess parties are what the Complainant has also specialised in since its inception and that this is clearly evident in the layout and design of its logo and website. It is not surprising that the Respondent changed its company name to Bella Princess Parties in November 2014, as a way to capitalise on the Bella Parties established reputation and brands. It has worked hard to achieve a reputation of excellence over the 6 years of trading prior to the registration of the Domain Name within the same business sector. It doubts the Respondent's argument that its change of name was to avoid any infringement of Disney copyright as at the event sense link at the bottom of the Respondent's Home page it is still advertising characters from Disney.
- 5.14** It keeps detailed records of all of its enquiries and bookings, including all instances where a client has called it expecting to be speaking with the Respondent and also with clients who have engaged with it and then have ended up on the Respondent's website booking form page. They then call the Complainant for help filling it in. It has many new and long-term loyal clients who have made this mistake and the number is increasing.
- 5.15** It relies upon DRS policy section 3 (ii) that there are '*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, is operated or authorised by, or otherwise connected with the Complainant.*' It denies any jealousy towards the Respondent and that its claims under the DRS process are fictitious. Had it not received calls from the general public and continued to receive these calls, which it alleges are increasing, it would not have entertained, or entered this action.

6. Discussions and Findings

6.1 Paragraph 2(a) of the Nominet Dispute Resolution Policy ('the Policy') states that for a Complainant's Complaint to succeed, it must prove to the Expert 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.*

6.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

6.3 Complainant's Rights

Under paragraph 1 of the Policy 'Rights' are defined as:

"Rights enforceable by the Complainant, whether under English Law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning."

6.4 The Complainant was founded on 4 September 2008, when it registered a company under the name Bella Parties Limited. Its domain name bellaparties.co.uk was registered on 1 May 2008. Assuming that it started trading on or around the same time, it has been trading for around 8 years or so to date. This is consistent with the Complainant's assertion that it had 6 years of prior trading prior to the registration of the Domain Name by the Respondent. There is no indication given that it either owns any registered trademarks for its name or a similar term or terms nor is there any evidence provided in relation to the level of use. The Complainant merely refers to its company registration founding date, its Domain Name and its website at its Domain Name.

6.5 Although under no obligation to do so the Expert reviewed the Complainant's website at its domain name on 25th April 2016. It is clear that it is a business which provides themed parties for children and lists numerous positive testimonials from satisfied customers. It has a

copyright notice on it dated 2008 to 2015. It is not clear whether it covers the whole of the UK with its services or not.

6.6 In terms of paragraph 2.2 of the Nominet Expert's Overview:

'If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial material matter such as press cuttings and search engine results).'

- 6.7 The evidence which the Complainant has put forward here is very limited. There is very little material to support a decision that the Complainant has unregistered rights which will fall within the definition of Rights as specified in the Policy. Indeed the Complainant in its Complaint does not even assert directly that it has any Rights.
- 6.8 The word "Bella" is related to the Italian and Latin languages and signifies "beautiful". It can also be used as a female name in English. On one view, it is a descriptive term. However, in the context it is used here, in the Complainant's name "Bella Parties", it is the more distinctive element of it as a whole as the word 'Parties' is entirely descriptive. On the balance of probabilities the Expert finds that the Complainant has been trading under its name from around 2008. Its website lists numerous positive testimonials and so it clearly has many satisfied customers and thus a reasonable customer base. The Respondent has not specifically challenged any Rights which may be owned by the Complainant other than to argue that the Complainant is not entitled to claim a monopoly on the word 'Bella' as it is a relatively common word. However, as against that the Complainant has used the word 'Bella' in combination with the term 'Parties' in its business for around 8 years or so and, as above, in the Expert's view is distinctive in this context. In the circumstances the Expert is prepared to find on the balance of probabilities that the Complainant has Rights in a name upon which to found a Complaint. In this respect the Expert notes that it is well established that the hurdle for meeting this test is not particularly onerous.
- 6.9 The Respondent does not deny that the Domain Name and the Complainant's Company Name are similar. In order to refute that there is any confusion the Respondent, rather than suggest there is no similarity, it goes to great lengths to point out the steps it takes through its booking system to make it clear to customers that it is not the Complainant. It also relies upon its alleged superior offering and brand recognition/web rankings. This suggests an implicit acceptance by the Respondent that there is similarity and scope for confusion to occur.
- 6.10 The comparison to be made under the Policy here as between the Domain Name and the name in which Rights are asserted is between Bella Parties and the bellaprincessparties.co.uk as the Domain Name. The only difference between these is (apart from the suffix .co.uk) is that the Domain Name has the added element of the word "Princess" interposed between 'bella' and 'parties.' As above the Expert considers the word "Bella" to be the distinctive part of the Complainant's name and it is included in the Domain Name. The Respondent says that its business model is providing 'princess parties'. The Complainant says in its Reply that it specialises in 'princess' parties too. From the Rankings at Annexes 1 and 1.1 to the Response 'princess' is used as part of all or most of the key words listed. In addition, a Google search for "princess parties" throws up a number of sites such as: "mylittleprincessparties.co.uk"; "perfectprincessparties.co.uk" and "princess-parties-london.com". These websites/businesses all offer "princess parties". This term is used to describe their common business model, that of supplying an entertainer pretending to be a princess to host a children's party. All of this suggests that the word 'princess' used in this context is descriptive and is a well-known term for a key business model in this niche area.

Thus despite the addition of the word 'princess' in the Domain Name its only distinctive feature is the word 'bella' which it shares with the Complainant's name and brand.

- 6.11 In all the circumstances, the Expert finds on the balance of probabilities that paragraph 2(a)(i) of the Policy, is satisfied in that the Complainant has Rights in respect of a name 'Bella Parties' which is similar to the Domain Name.

6.12 Abusive Registration

- 6.13 It therefore requires to be considered whether the Domain Name in the hands of the Respondent is an Abusive Registration. Paragraph 1 of the Policy defines an Abusive Registration as the 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;*

- 6.14 It is sufficient to satisfy either of the limbs for there to be a finding of an Abusive Registration.

Abusive Registration under paragraph 1(i) of the Policy

- 6.15 Paragraph 3(a) of the Policy sets a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration.

- 6.16 The relevant one here is under the Policy, paragraph 3(a)(ii) which is:

'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.'

- 6.17 The Complainant relies upon this ground and claims that the use of the Domain Name by the Respondent is causing confusion and misunderstandings between its customers and its staff and that some customers calling it think they have called the Respondent. However it has produced no actual evidence of confusion and has merely referred to it with some examples of the types of incidents concerned. The Respondent in its Response requested that the Complainant produce evidence of the calls as referred to, but the Complainant has not done so. Its Reply instead refers to it having records of all instances where its clients had called it expecting to be speaking with the Respondent and also where its clients had in error ended up on the Respondent's website booking form page.

- 6.18 Despite the lack of evidence produced, the descriptions given by the Complainant of the types of confusion it says it is experiencing are credible ones in the Expert's view. The reliance that the Respondent places on it having a stronger brand, more customers etc than the Complainant and differences in its booking procedures is largely irrelevant to the issue of confusion. Also the Respondent states that the targeted key words are completely different for each party. This is not correct as Annex 1.1 demonstrates 4 in common out of totals of 5 and 7 respectively. It also tends to suggest that the SEO tactics employed will not help avoid confusion. Despite the Respondent stating that searching the keywords would not throw up the respective parties' sites in close proximity, it also states that a google search for Bella parties results in showing the Complainant's site in third position. Also inputting the Complainant's name to a Google search results in both being on the same page.

- 6.19 In order to be an Abusive Registration in most cases there requires to be prior knowledge by the Respondent of the Complainant, its business and its website, as well as an element of intention. This was made clear in the Appeal Panel decision in the case of:

Verbatim Limited v Michael Toth (DRS 4331):

'In this Panel's view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:

(1) First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights.

(2) Secondly, 'knowledge' and 'intention' are pre-requisites for a successful complaint under all heads of paragraph 3(a)(i) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.

(3) Thirdly, 'intention' is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.

(4) Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights.

(5) Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present.'

- 6.20 Here we are dealing with a paragraph 3(a) (ii) situation and thus intention is not a necessary ingredient of a successful finding. However prior knowledge is nevertheless still required.
- 6.21 The Complainant suggests that the Respondent's adoption and use of the Domain Name has been deliberately designed to cause confusion and to take advantage of its rights. The Complainant points out that the Respondent registered both the Domain Name and its new Company Name after 6 years of prior trading by both companies.
- 6.22 The Expert finds it odd that the Respondent decided to change its Domain Name and its brand after such a lengthy period of trading under Tinkerbella and to a name which is so similar to that of the Complainant. The explanation given for this is that it thought its previous name might be too close to Disney's Tinkerbell and it wished to avoid infringing any established copyright. It also says it continued to use 'Bella' as part of its name as it had already established its brand in it through previous use of it in its name Tinkerbella. Tinkerbella is very similar/almost identical to the name of a Disney character Tinkerbell and is likely to be associated with that character by the public. It seems likely that any goodwill and reputation generated by the Respondent in that name would be in the whole name and would not have accrued to 'bella' as such. Also, as the Complainant points out, the event sense link at the bottom of the Respondent's Home page still advertises characters from Disney. These include Tinkerbell.
- 6.23 The Respondent denies that it had any intention to confuse customers. It claims that the purpose of its site is to provide an excellent service to customers and not simply to confuse internet users. It relies on its stronger brand ranking in domain authority and that it is an established UK wide company with a national presence and brand where the Complainant is

- not. It also relies upon differences in its website look and feel which it says bear no similarity to that of the Complainant. It argues that these factors make it extremely unlikely that its site was set up specifically to confuse internet users. Given the Expert's views on prior knowledge, as below, it is not strictly necessary to decide the issue of intention in order to make a finding of an Abusive Registration. However if it were necessary to do so, whilst it is very finely balanced, the Expert's view is that it is more likely than not that there was an element of intention to benefit from the Complainant's pre-existing good will.
- 6.24 The Respondent does not deny that it had prior knowledge of the Complainant. On the balance of probabilities the Expert considers that the Respondent would have known about the Complainant. This because it is a niche market and the Respondent clearly understands how the internet works, uses SEO and would be likely to know about its competitors. The Respondent points out in detail the steps it alleges it takes to make it clear to customers that it is not the Complainant. It also relies upon its alleged stronger reputation, superior offering and brand recognition/web rankings to distinguish it. This suggests that it knows its market and would be aware of its existing competitors, including the Complainant.
- 6.25 Mere prior knowledge however, is not necessarily enough to establish an Abusive Registration. It is also necessary to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights. Relevant to this here is the issue of whether there is confusion or likelihood of confusion as a result of the Respondent's use of the Domain Name.
- 6.26 Section 3.3 of the Nominet Experts' Overview says: *'Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue...
In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site 'operated or authorised by, or otherwise connected with the Complainant.'* This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived...
- 6.27 *Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment (other than the generic domain suffix). ... However, the activities of typosquatters are generally condemned...as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity.'*
- 6.28 Here as discussed the Domain Name is not identical to the name in which the Complainant has Rights but incorporates it and adds a descriptive word 'princess'. As such it could be considered to be an 'appendage' to the Bella Parties name which is appropriate to the Complainant's field of activity. Customers looking for the Complainant are likely to search the term 'bella' in combination with 'parties' and possibly 'princess'. Such searches are likely to bring up both businesses and the customer could easily believe that the businesses are related or mistake one for the other. Thus they could end up on the Respondent's website thinking it is that of the Complainant. This is initial interest confusion and it does not matter that any confusion is dispelled on arrival.
- 6.29 Whatever the Respondent's underlying motivation, it seems clear that, in both registering and using the Domain Name, it has by taking the Complainant's brand implied a connection with the Complainant. Whether or not on arrival any confusion is dispelled as the Respondent suggests, this takes advantage of the Complainant's Rights and such advantage taken is unfair.

- 6.30 Also above despite the lack of evidence produced by it the descriptions given by the Complainant of the types of confusion it says it is experiencing are credible ones in the Expert's view. Furthermore it is highly unlikely that the Complainant would go to the bother of making this Complaint without some reason to do so. In addition the Domain Name is similar to the Complainant's name and the dominant distinctive term 'bella' is featured in both. Thus the Expert considers on the balance of probabilities that there is likely to be both initial interest confusion and actual confusion of the nature described by the Complainant and in any event such actual confusion is likely to occur.
- 6.31 That is not necessarily the end of the matter. There is a non-exhaustive list of factors in the Policy which may be evidence that the Domain Name is not an Abusive Registration. One of these is in paragraph 4(a)(ii) of the Policy which is *'The Domain Name is generic or descriptive and the Respondent is making fair use of it.'* The Respondent argues that the Complainant is not entitled to claim a monopoly on the word "Bella" as it is a relatively common word. It also argues that it is using the Domain Name in connection with a genuine offering of goods and services. As above, the Expert has found that the word 'Bella' is distinctive and accordingly the Complainant's name is not generic or descriptive. Thus this ground does not assist the Respondent here.
- 6.32 Accordingly, the Expert finds that the Complainant has Rights in the name "Bella Parties Limited" and that the Domain Name is identical or similar to it and that the Respondent is likely on the balance of probabilities to have had prior knowledge of the Complainant before it changed its name to incorporate the Domain Name and registered the Domain Name itself. Also the Expert has found that there is likely to be both initial interest confusion and actual confusion of the nature described by the Complainant. As such the requirements of paragraph 3(a)(ii) of the Policy are met. Thus the Expert concludes that paragraphs 1(i) and 1(ii) of the Policy namely that, *'The Domain Name was registered or otherwise acquired in the manner which, at the time when the registration or acquisition took place, took advantage of or was unfairly detrimental to the Complainant's rights, / 'it has been used in a manner which has taken unfair advantage or was unfairly detrimental to the Complainant's Rights,'* are both met.

7. Decision

- 7.1 The Expert finds the Complainant has Rights in a name and mark which is similar to the Domain Name.
- 7.2 For the reasons above the Expert find that the Domain Name in the hands of Respondent is an Abusive Registration.
- 7.3 The Expert directs that the Domain Name be transferred to the Complainant.

UNSIGNED

Signed G. Grassie

Dated 9/5/16