



DISPUTE RESOLUTION SERVICE

D00017207

Decision of Independent Expert

Jaguar Land Rover Limited

and

Mr Nick Austin

1. The Parties

Complainant: Jaguar Land Rover Limited
Abbey Road
Whitley
Coventry
CV3 4LF
United Kingdom

Respondent: Mr Nick Austin
East Devon Cars Ltd
Shute Garage
Taunton Cross
Axminster
Devonshire
EX13 7PZ
United Kingdom

2. The Domain Name

landrover4u.co.uk

3. Procedural History

3.1 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.

3.2 On 11 March 2016 the complaint was received. On 16 March 2016 the complaint was validated and notification of it sent to the parties. On 29 March 2016 the response was received and notification of it sent to the parties. On 1 April 2016 a reply reminder was sent. On 5 April 2016 the reply was received. On 6 April 2016 notification of the reply was sent to parties and the mediator was appointed. On 11 April 2016 the mediation started. On 4 May 2016 the mediation failed and close of mediation documents sent. On 16 May 2016 a Complainant full fee reminder was sent. On 16 May 2016 the dispute was suspended and on 21 June 2016 it was opened. On 21 June 2016 the dispute was suspended and on 28 June 2016 it was opened.

On 5 July 2016 the Expert decision payment was received. The date of my appointment as Expert was 8 July 2016.

- 3.3 The first suspension of the dispute was due to an outstanding query relating to potential settlement. The second suspension was because the parties were negotiating potential settlement. I am satisfied there are no procedural issues arising from these suspensions. The effect of the suspensions was to extend the time period for the Complainant to pay for the Expert decision. Paragraph 12a of the Nominet Dispute Resolution Service Procedure (“the Procedure”) provides that Nominet UK or the Expert may in exceptional cases extend any period of time in proceedings under the DRS. Paragraph 12e of the Procedure states that the determination of whether exceptional circumstances exist under any provision of the Procedure is in Nominet UK’s sole discretion. I am satisfied that Nominet UK was entitled to extend the time period for payment of the Expert decision.

4. **Factual Background**

- 4.1 The Complainant is a well known car manufacturer employing over 25,000 people in the UK. The Complainant’s two main brands are JAGUAR and LAND ROVER. The Complainant operates through a network of authorised dealers selling its new and approved used vehicles and vehicle parts and providing a range of services, including repair and maintenance of vehicles. The Complainant’s Land Rover vehicles have won a variety of industry awards.
- 4.2 The Complainant owns registered trade marks including:
- (a) UK trade mark no. 663199 for LAND ROVER in class 12 entered on the register on 11 October 1947;
 - (b) UK trade mark no. 1378096 for LAND ROVER registered for various classes entered on the register on 21 August 1992; and
 - (c) EU trade mark no. 143644 for LAND ROVER in various classes registered on 19 July 2000.
- 4.3 The Complainant owns the domain names land-rover.com, landrover.com and landrover.co.uk.
- 4.4 The Domain Name was registered on 22 January 2008. It is being used for a website primarily offering Land Rover vehicle repairs and servicing and used Land Rover vehicles for sale.

5. **Parties’ Contentions**

- 5.1 I set out below a summary of what I regard to be the main contentions of the parties.

The Complainant’s complaint

- 5.2 The Complainant submits it has Rights in respect of a name or mark which is identical or similar to the Domain Name:
- (a) The Complainant relies on its registered trade marks. The Complainant also asserts that the LAND ROVER mark has acquired extensive goodwill and a substantial reputation and is a very well-known mark in the UK, EU and the world.
 - (b) The Complainant argues that LAND ROVER is the dominant and distinctive element of the Domain Name and that ‘4u’ is a descriptive term. The Complainant says ‘4u’ is a commonplace slang abbreviation of ‘for you’ which is often used by companies in their marketing to try to attract consumers. The Complainant states that ‘4u’ merely confirms that the goods and services offered are tailored for the individual consumer. It also states that LAND ROVER being at the beginning of the Domain Name is more likely to be noticed by a consumer than ‘4u’.
- 5.3 The Complainant submits that the Domain Name, in the hands of the Respondent, is an Abusive Registration and relies on paragraph 3.a.ii of the Nominet Dispute Resolution Service Policy (“the Policy”):

- (a) The Complainant says the Domain Name was registered significantly after 1947 when its rights in the LAND ROVER mark began.
- (b) The Complainant states the Respondent is using the Domain Name to host a commercial website for identical services to those provided by the Complainant under the LAND ROVER mark. The Complainant says the Respondent is not an authorised dealer of its Land Rover vehicles, is not an authorised Land Rover Service Centre or franchisee and has no authorisation to use the LAND ROVER mark. The Complainant relies on content on the Respondent's website as confirmation that the Respondent is not a franchised dealer.
- (c) The Complainant argues that the use of the Domain Name in connection with identical goods and services to those of the Complainant suggests to consumers that the Respondent is authorised by, connected to, affiliated with or endorsed by the Complainant. It contends that consumers seeing the Domain Name will associate the Respondent's website with the Complainant.
- (d) The Complainant says the Respondent's website has no disclaimer that the Respondent is not affiliated with the Complainant nor does it contain a legend recognising the Complainant's trade mark rights. The Complainant argues this increases the likelihood of consumers being confused into believing the Respondent is associated with or authorised by the Complainant. It states that whilst there is some token use of the term 'independent' on the website and a throwaway comment that the Respondent is not a franchised dealer, such use is sporadic and discreet and would likely go unnoticed by a consumer.
- (e) The Complainant says the Respondent's website is used to sell, buy and service vehicles other than Land Rover vehicles. The Complainant contends that this causes dilution of its LAND ROVER mark and is severely damaging and detrimental to its reputation and the reputation and goodwill it has built up in the LAND ROVER brand.
- (f) The Complainant says there appears to be no need for the Respondent to use the Domain Name other than to trade off the reputation the Complainant has built up in the LAND ROVER brand and to suggest an association with, or an endorsement by, the Complainant. It argues the Respondent could use a generic domain name.

The Respondent's response

- 5.4 The Respondent is an individual who describes himself as a director of Landrover4U, the business which uses the website at the Domain Name. In his response, the Respondent treats Landrover4U as the respondent to the complaint.
- 5.5 The Respondent contends the following in respect of registration of the Domain Name with the intention of selling, renting or disposing of it:
 - (a) The Respondent states it is a business engaged in the sale and repair of used Land Rover vehicles which has been trading since 1998 and was formerly called JBLandrovers. The Respondent says that when the business was purchased by its current owners in 2002 the corporate vehicle used was Landrover4U Ltd, although the trading style JBLandrovers was retained. The Respondent states that at this time it complied promptly with a request from the Complainant's representatives to remove the Land Rover oval from literature inherited from the previous owners of the business. The Respondent says that in 2008 the trading style of the business was changed to Landrover4u.
 - (b) The Respondent states that it has invested considerably in equipment dedicated to the diagnosis and repair of faults with Land Rover vehicles including a diagnostic system which reads information from the vehicle's on board systems. The Respondent says it is a regular purchaser of genuine Land Rover parts from a franchised Land Rover dealer in Devon.

- (c) The Respondent contends that the Domain Name was registered because of the nature of its business and not with the intention of transferring or selling it to the Complainant or any other entity.

5.6 The Respondent contends the following in respect of use of the Domain Name to suggest it is associated with or authorised by the Complainant:

- (a) The Respondent says that for used car repairs and sales many dealers throughout the UK are specialists in a particular brand. The Respondent contends that numerous of these dealers put the name of the specialist brand in their name and website title. The Respondent gives some examples and says it is common practice. The Respondent asserts that the public is familiar with independent garages and how they differ from authorised dealers; primarily that new cars are not available from independent dealers and that manufacturer warranty repairs can only be undertaken by franchised dealers.
- (b) The Respondent asserts that in order to differentiate from the Complainant and its network of authorised UK franchised dealers there are a number of distinguishing features on the Respondent's website as follows:
 - (i) the theme colours of orange and black are distinct from the recognisable and well known green and gold of Land Rover;
 - (ii) the Land Rover badge or oval is not used other than in photographs of products;
 - (iii) the slogan 'Independent Land Rover Specialists' is placed prominently on the site head banner and can be seen on every page;
 - (iv) 'independent landrover' is used throughout the site;
 - (v) the Respondent's logo is unlike the Complainant's; and
 - (vi) a disclaimer has been added to the home page that the business is not an authorised or franchised dealer.
- (c) The Respondent says it is not seeking to appear to be a franchised or authorised dealer of the Complainant. It asserts the opposite is true because it is offering an alternative to owners of older Land Rover vehicles and has nothing to offer buyers of new vehicles.
- (d) The Respondent states it is contradictory for the Complainant to rely on the content of the Respondent's website as confirmation that the Respondent is not an authorised dealer and to accuse the Respondent of misleading consumers into thinking it is authorised by the Complainant. The Respondent asserts its goods and services are not identical to the Complainant's as it does not offer new vehicles for sale or warranty repairs for Land Rover vehicles.
- (e) The Respondent says that sometimes vehicles other than Land Rovers are for sale through its website. The Respondent states these are part exchange vehicles from buyers who have purchased a used Land Rover vehicle; represent only a fraction of the vehicles sold by the Respondent; and it is made clear the vehicle was a part exchange. The Respondent also states that a separate website for these vehicles would be an onerous and unaffordable option. The Respondent argues that these vehicles do not detract from the fact that it is an independent specialist in the repair and sale of primarily, and in all but a very few cases, Land Rover vehicles. The Respondent states that erroneous references to other products, 'Polaris' and 'Kioti', have been removed from its site.
- (f) The Respondent says that in December 2013 the Complainant's representatives wrote to the Respondent stating an intention to commence legal proceedings for matters relating to the use of the term 'landrover' in the Respondent's business name, website and advertising material. The Respondent states that its solicitor responded requesting

clarification but no reply was received leading the Respondent to reasonably assume that no further action was intended.

- 5.7 In summary the Respondent says that it has been trading for many years as an independent specialist in and repairer of used Land Rover vehicles; the trading style and website title 'landrover4u' have been in use since 2008; 'landrover' has been in the Respondent's domain name since 1998; changing the name of its business and website would adversely impact on its business and might close it down; the Complainant has been aware of the Respondent's activities and trading style since at least 2002; the Complainant sells large volumes of product to the Respondent through its authorised network; independent specialists in premium brand motor vehicles are a common feature of the market place and are recognisable to customers; and Land Rover is used only to make clear that the Respondent is a specialist in that product not that it is authorised or in any way connected to the Complainant. The Respondent states it is willing to add statements or disclaimers to its site to make clear the Respondent is not an authorised dealer or representative of the Complainant.

The Complainant's reply

- 5.8 The Complainant says it is not alleging that the Respondent registered the Domain Name with the intention of selling, renting or disposing of it.
- 5.9 The Complainant says it is irrelevant that the Respondent's company has been trading since 1998 as the Complainant's rights in the LAND ROVER mark date from 1947.
- 5.10 The Complainant says it is also irrelevant that in 2002 the Respondent removed the stylised LAND ROVER trade mark from its literature. The Complainant states the Respondent was fully aware of the Complainant's rights in the LAND ROVER mark when it registered the Domain Name.
- 5.11 The Complainant contends that neither the provision by the Respondent of services relating to genuine Land Rover vehicles nor its purchase of genuine Land Rover parts from an authorised dealer provides the Respondent with authorisation to use the LAND ROVER mark in the Domain Name. The Complainant states that even the authorised dealer is not allowed to use or register a domain name containing the LAND ROVER mark. The Complainant contends the Respondent does not have authorisation to use the LAND ROVER mark unless it is in a descriptive sense.
- 5.12 The Complainant says the fact that there are third parties in the field of used car repairs and sales which use the registered trade marks of Original Equipment Manufacturers (OEMs) in their names and domain names does not mean this is right. The Complainant comments that the Respondent has no knowledge of any possible relationship or any action being taken between the Complainant and the third parties the Respondent refers to as using the LAND ROVER mark in their domain names. The Complainant surmises that the same is true of the third parties using the trade marks of other OEMs. The Complainant does not agree that it is common practice for third parties to use the registered trade marks of OEMs in their domain names in order to attract Internet users to their websites. The Complainant refers to a number of independent garages specialising in Land Rover vehicles which use domain names not containing LAND ROVER and says this demonstrates that it is not necessary for the Respondent to use LAND ROVER in its domain name.
- 5.13 The Complainant contends that the look of the web site at the Domain Name is irrelevant as the Domain Name is at issue not the style of the website. The Complainant states the following in respect of the Respondent's website:
- (a) The Respondent's use of a different colour scheme to the Complainant's does not mean that Internet users will not be confused into believing that the Respondent's website is in some way connected to the Complainant or that the Respondent's services are endorsed by the Complainant. The Complainant states that its authorised retailers of new Land

Rover vehicles are allowed to use the Complainant's branding style but its authorised body shops and parts retailers are not. The Complainant contends that for an Internet user not to be confused, they would need to have considerable knowledge of the Complainant's dealer network which the average internet user does not have.

- (b) The non-use of the Complainant's stylised LAND ROVER mark is not sufficient to avoid confusion as the Respondent still uses the Complainant's mark in a word format in the Domain Name and in its logo.
- (c) The use of 'independent Land Rover Specialists' is not sufficient to avoid confusion as this could go unnoticed by Internet users and even if noticed they may still assume the Respondent is endorsed by the Complainant.
- (d) The Respondent's disclaimer on the home page is not sufficient to avoid confusion as Internet users may not see it. The Complainant says the disclaimer was only recently added and contends this was after the Respondent became aware of the complaint.

5.14 The Complainant says the information on the Respondent's website that it is not an authorised dealer may go unnoticed by an Internet user and does not mean that Internet users will not be confused into believing the Respondent is endorsed by the Complainant. The Complainant states the Respondent's services are identical to those of the Complainant as the Complainant sells, through its authorised dealers, used cars as well as new cars.

5.15 The Complainant contends it is irrelevant that the non Land Rover vehicles sold by the Respondent are from part exchange transactions as they are still being retailed under the Complainant's trade mark. It says the fact that it would be onerous to have a separate website to retail such vehicles does not mean it is right to retail them on a website at the Domain Name.

5.16 The Complainant disputes that it has been aware of the Respondent's name and branding style since 2002.

5.17 The Complainant considers that any type of statement or disclaimer that the Respondent is not an authorised dealer or representative of the Complainant will not eliminate the risk of confusion.

6. **Discussions and Findings**

6.1. Under paragraph 2 of the Policy in order to succeed with its complaint the Complainant is required to prove, on the balance of probabilities, to the Expert that:

- (a) the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (b) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights

6.2 Rights is defined in paragraph 1 of the Policy 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."*

6.3 In this case I consider the Complainant has established registered trade mark rights and unregistered rights through use in the LAND ROVER mark. I therefore consider that the Complainant has Rights in the LAND ROVER mark.

6.4 In my view the LAND ROVER mark is identical or similar to the Domain Name. The only addition to the Domain Name is '4u' which is a non-distinctive abbreviation of 'for you' (it is well accepted that the .co.uk suffix is to be disregarded when making the comparison).

6.5 I therefore find that the Complainant has Rights in respect of a name or mark, LAND ROVER, which is identical or similar to the Domain Name.

Abusive Registration

6.6 Paragraph 1 of the Policy defines an Abusive Registration as follows:

Abusive Registration means 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

6.7 The Complainant relies only on Paragraph 1.ii of the Policy. Paragraph 3.a of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration including the factor relied on by the Complainant namely Paragraph 3.a.ii:

"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".

6.8 This dispute raises the interesting question of whether the incorporation of the Complainant's trade mark into a domain name by an independent, unauthorised retailer of the Complainant's goods and provider of services relating to the Complainant's goods constitutes an Abusive Registration. Not unsurprisingly this has been considered by a number of Appeal Panels, most recently by the Appeal Panel in DRS 16416 World Wrestling Entertainment, Inc. and Daniel Raad ("World Wrestling Entertainment Appeal").

6.9 In this Appeal the Panel considered a number of previous decisions and set out the general principles that can be taken from them. I set out below a summary of these principles (I use italics where I quote directly from the decision).

- (a) Simply using the name of another trader is likely to be objectionable as it is likely to fall within Paragraph 3.a.ii of the Policy as set out above.
- (b) *"It has also been generally accepted that where the Domain Name in question is in substance an unadorned reproduction of a Complainant's trade mark (or a minor variant thereof) without any additional modifying terms, that will suffice to establish confusion, even if a visitor to the website linked to the Domain Name would realise once they got there that the site itself was nothing to do with the Complainant".*
- (c) *"However the use of an "unadorned" name or trade mark as a domain nameis to be contrasted with the situation where a name or trade mark in combination with a modifying term is used".* This is the case here where the modifying term '4u' is used.
- (d) In the Appeal Panel decision in DRS 07991 Toshiba Corporation and Power Battery Inc. ("the Toshiba Appeal") *"four criteria were identified as being relevant to the determination of whether a reseller's use of a domain name incorporating a complainant's trade mark/name is abusive, as follows:*
 - 1. It is not automatically unfair for a reseller to incorporate a trade mark into a domain name and the question of abusive registration will depend on the facts of each particular case.*
 - 2. A registration will be abusive if the effect of the respondent's use of the domain name is falsely to imply a commercial connection with the complainant.*
 - 3. Such an implication may be the result of "initial interest confusion" and is not dictated only by the content of the website.*

4. *Whether or not a commercial connection is implied, there may be other reasons why the reseller's incorporation of the domain name is unfair. One such reason is the offering of competitive goods on the respondent's website".*

6.10 The Panel in the World Wrestling Entertainment Appeal then concluded that *"the extent to which the incorporation of a modifying term into a domain name will result in the domain name not being confusing within the meaning of Paragraph 3.a.ii of the Policy depends upon the facts of a given case"*. The Panel stated the following:

"The Panel does not think it is sensible to try to lay down rigid general rules directed at specific words or terms as cases will depend upon their own facts. However as a matter of broad principle, the Panel considers the position to be as follows in relation to cases where the complaint concerns a domain name where the alleged abuse is said to arise in respect of a website which is used to sell only the genuine goods or services of the complainant.

If:

- 1. a website is linked to a domain name; and*
- 2. the website is used to sell only the genuine goods or services of a third party; and*
- 3. the third party alleges the domain name is an Abusive Registration; and*
- 4. the third party has relevant Rights in respect of a name or trade mark.*

Then:

- 5. use of the name or trade mark concerned in unadorned form as a domain name is likely to amount to an Abusive Registration.*
- 6. use of the name or trade mark concerned is also likely to amount to an Abusive Registration if the name or trade mark is combined with a term or terms that results in a domain name which would readily be considered to be that of the owner of the name or trade mark concerned.*
- 7. Such use is less likely to amount to an Abusive Registration if the name or trade mark concerned is combined with a term or terms that results in a domain name which would not readily be considered to be that of the owner of the name or trade mark concerned.*

In stating these principles the Panel would add as follows:

- 8. These are not absolute rules, hence the use of the terms "likely" and "less likely" – all relevant circumstances need to be taken into account and other factors may be relevant and result in a different conclusion being reached. As well as the modifying term itself such factors could include for example: the strength or fame of the name or trade mark in question; the nature and price of the goods or services being offered; the sophistication or otherwise of the likely consumers of such goods or services; questions of licence or permission; and any relevant contractual arrangements between the parties. Further factors such as the nature, appearance and content of the website to which the domain name is linked, and the extent to which any disclaimers are used on that website, may also be relevant in a given case if it appears appropriate to consider the case on the basis of matters beyond initial interest confusion.*
- 9. As stated above these principles apply where the website in question is selling only the goods or services of the owner of the name or trade mark concerned. If competing or counterfeit products are also or alternatively being sold then still further considerations may apply and a given domain name which would not amount to an Abusive Registration in accordance with these principles may nevertheless be found to be so when such additional considerations are taken into account.*

It follows that in any given case the exact point at which a given domain name can be considered to be unobjectionable will depend upon all the facts, including of course the modifying term used."

- 6.11 In the Toshiba Appeal the Panel stated the following in relation to the offer of competing goods to those of the trade mark owner on the respondent's website:

"The further issue, however, is whether the fact of the offering of competitive products on the Respondent's website is sufficient to render the registration abusive, even in the absence of "initial interest confusion". On this question, the Panel unanimously considers that, if and insofar as it is fair for a retailer to incorporate a trade mark into its domain name without the trade mark owner's consent, to accord with the principles stated above that fairness is likely to be dependent upon the retailer only selling the trade mark owner's genuine products. To do otherwise is likely to take unfair advantage of the Complainant's rights by "riding on its coat-tails" for the benefit of the Respondent. This element of unfair advantage remains, even where little or no detriment to the Complainant has been demonstrated."

- 6.12 Bearing in mind the above guidance from the World Wrestling Entertainment Appeal and the Toshiba Appeal, I now turn to a consideration of the facts in this case starting with the content of the Respondent's website. The Landrover4U logo features prominently at the top of each page of the website. It is circular with 4u in the centre, LAND above it and ROVER below it, both words following the circumference of the logo. 4u and LAND ROVER are in orange against a black background. Below the logo is "Independent Land Rover Specialists". This phrase is also used in the website content. As is acknowledged by the Complainant, Landrover4U also indicate on the website that it is not a franchised dealer of the Complainant. Having regard to the website content as a whole I do not consider that it falsely implies a commercial connection with the Complainant.

- 6.13 I shall now therefore consider whether there may be such an implication as a result of 'initial interest confusion' namely whether Internet users seeing the Domain Name believe or are likely to believe that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

- 6.14 In the Toshiba Appeal which concerned the domain name *toshiba-laptop-battery.co.uk* the Panel did not consider there was initial interest confusion. The Panel said:

"The view of the majority of the Panel is that the Complainant has not demonstrated, on the balance of probabilities, that the Respondent's use of the Domain Name would be likely to give rise to any such confusion. The majority panellists do not consider that either the Domain Name itself or the results of a search of the terms in question would be likely to result in any such confusion in the mind of the average Internet user, bearing in mind that a typical search page includes a short description of each "hit" as well as the actual domain name. So far as the name itself is concerned, the majority Panel believes that the Domain Name in this case falls into a very different category from cases involving the "unadorned" use of a trade mark (e.g. <toshiba.co.uk>), where Internet users may be presumed to believe that the name belongs to or is authorised by the complainant. In this case, two extra hyphenated words turn the domain name as a whole into a rather clear description of the main goods on offer at the website (replacement batteries for Toshiba laptop computers). In addition, this lengthy "adornment" may reasonably be seen as atypical of the usage of major rights owners, who are free to use much shorter unadorned names."

- 6.15 In the World Wrestling Entertainment Appeal the Panel considered that the modifying term "shop" fell on the wrong side of the line. The Panel said:

*"The term "shop" itself is simply a very general term suggesting a retail operation-such a term might well be adopted by a trade mark owner to designate a web site which makes available its products for sale and in the opinion of the Panel the domain name *wweshop.co.uk* might*

reasonably be thought to be that of the Complainant, particularly when the Complainant operates substantially the same type of on-line retail business itself. The Respondent was no doubt hoping to attract potential customers for products relating to the business the Complainant conducts by using a domain name which, in the opinion of the Panel, would reasonably be considered by those potential customers to be that of the Complainant. That amounts to an Abusive Registration."

- 6.16 In this case the modifying term is '4u' which I accept is a shortened form of 'for you'. The Complainant says this term is commonly used by companies in their marketing to try to attract consumers and is purely descriptive, merely confirming that the goods and services being offered are tailored for the individual consumer. However, the Complainant has adduced no evidence of this asserted common use.
- 6.17 I accept that '4u' has descriptive connotations when added to a name or trade mark as suggesting goods or services relating to that name or trade mark which are "for" the Internet user, chosen or selected in some way to be of interest. I do not consider that this modifying term turns the Domain Name as a whole into a description of the goods and services on offer at the website, namely (primarily) the repair and servicing of Land Rover vehicles and the sale of Land Rover vehicles. I also do not consider that '4u' is a lengthy adornment which may reasonably be seen as atypical of the usage of major rights owners. Whilst there is no evidence of the use of this term by trade mark owners in their domain names, I consider that it is the type of general term that an Internet user could reasonably expect to have been adopted by a trade mark owner to designate a website for its products and services considered to be of interest to Internet users. Further '4u' is a relatively short descriptive term which appears in the Domain Name after the Complainant's very well known trade mark. There is also nothing in the Domain Name, such as 'independent', to make it apparent to Internet users that it is not connected with the Complainant. These factors suggest to me that there is a real risk the Domain Name could be considered by Internet users to be that of the Complainant.
- 6.18 In this case the website at the Domain Name has also been used in connection with competing goods and services. The site states that the Respondent's business provides servicing and repairs for all Land Rovers and other 4x4's. The site advertises for sale non Land Rover vehicles. There is also a section on the site devoted to vehicle sourcing which does not relate only to Land Rover vehicles, although I note the Respondent states that the references to Polaris and Kioti products have been removed. The Respondent says the non Land Rover vehicles advertised are part exchange vehicles which represent only a fraction of the vehicles sold. This is consistent with the content of the Respondent's website which the Complainant has adduced in evidence. Nevertheless as the World Wrestling Entertainment Appeal and the Toshiba Appeal make clear the use of the Domain Name in relation to such competing goods is a relevant factor for me to take into consideration.
- 6.19 Further, the services of the Respondent's business of Land Rover repairs and servicing are not genuine authorised services of the Complainant and are likely to compete with those provided by the Complainant through its authorised dealers. Indeed the Respondent's website states that the rates of Landrover4U for servicing and repair work are very competitive when compared to a franchised dealer. There is also a question and answer section on the Respondent's site which states that having a Land Rover serviced by an independent specialist will not invalidate a Land Rover warranty as the law prevents manufacturers from forcing customers to use their own service outlets. It is clear from such website content that the Respondent's business is offering services which compete with those of the Complainant.
- 6.20 Taking into account my finding at paragraph 6.17 that there is a real risk the Domain Name could be considered to be that of the Complainant and the use that has been made of the Domain Name in relation to competing goods and services, I consider that the use of the Domain Name constitutes an Abusive Registration

- 6.21 Finally, the Respondent's response raises the issue of potential delay by the Complainant. The Respondent asserts that the Complainant has been aware of the Respondent's activities and trading style since 2002. The Respondent also makes reference to correspondence from the Complainant's representatives in December 2013 complaining about the business name, website and advertising material.
- 6.22 The Domain Name was registered over 8 years ago. It is unclear when the Complainant became aware of the registration, although it did wait over 2 years after the letter from its representatives to bring this complaint. The issue of delay was considered by the Appeal Panel in DRS 15788 Lucasfilm Ltd.,LLC and ABSCISSA.COM Limited ("Lucasfilm Appeal"). The Panel considered that delay does not automatically bar an action where the use complained of is ongoing (as is the case here) but, depending on the facts, it might mean that an otherwise Abusive Registration is acceptable.
- 6.23 In this case I do not consider that any delay in bringing the complaint has prejudiced the Respondent being able to argue his case nor has he suggested that is the case. However, it is relevant to consider whether there has been any unfair prejudice to the Respondent as a result of delay. In the Lucasfilm Appeal the Panel said: "*Further issues in relation to delay might arise in relation to a domain name which had over time built up its own goodwill amongst regular customers, though any such case would require further consideration of the facts*".
- 6.24 The Appeal Panel in DRS 08634 Emirates and Michael Toth stated:
- "Even if the Respondent could properly claim to have acted on the assumption that the Complainant had no objection to his registration and use of the Domain Name, we do not consider that he has suffered any unfair prejudice as a result of the delay. As we have found, he cannot be said to have developed a proper business under the Domain Name or a "genuine offering of goods or services" in the sense of paragraph 4aiA of the Policy. Rather, its use has been for click-through traffic and as a place holder for a valuable domain name. The Panel finds that the Respondent has not in reality developed a business under the Domain Name in the belief that the Complainant had no objection to his using it or with the encouragement of the Complainant"*.
- 6.25 The Respondent has developed a business under the Landrover4U name. Although no evidence has been adduced on the turnover of this business, it is described on the website as "*one of Devon's largest independent Land Rover specialists*". The site at the Domain Name is used to advertise the repairs and servicing business of Landrover4U with it seems Internet users being able to book a service on-line. The site also advertises vehicles for sale and has a section where Internet users can input details for a vehicle to be sourced.
- 6.26 However, I do not consider that the Respondent developed his business under the Domain Name in the reasonable belief that the Complainant had no objection to its use or with the encouragement of the Complainant. When the Respondent registered the Domain Name and rebranded his business in 2008 he was aware that the Complainant had previously objected to use of the stylised LAND ROVER mark in literature. In my view, the Respondent should reasonably have appreciated that the Complainant was likely to object to the Domain Name given that the LAND ROVER mark features so prominently in it. Further the Respondent knew from December 2013 that the Complainant objected to the use of LAND ROVER in the name of his business, website and in advertising material but nevertheless he carried on using the Domain Name. The Respondent says he assumed that the Complainant did not intend to take further action because nothing further was heard from the Complainant after December 2013. However, I do not consider this to be a reasonable assumption after the Complainant had stated an intention to commence legal proceedings. I note that a solicitor was instructed to respond to the Complainant's correspondence and the Respondent would have had the opportunity to seek legal advice on the use of the Domain Name at that time.

6.27 Accordingly, in all the circumstances I do not consider that any delay in the Complainant bringing its complaint after registration of the Domain Name makes the Abusive Registration in this matter acceptable.

7. **Decision**

7.1 I find that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7.2 I direct that the Domain Name be transferred to the Complainant.

Patricia Jones

Dated 22 July 2016