

# **DISPUTE RESOLUTION SERVICE**

**D00018324**

## **Decision of Independent Expert**

easyGroup Limited

and

Mr Kevin Adams

### **1. The Parties:**

Complainant: easyGroup Limited  
10 Ansdell Street  
London  
W8 5BN  
United Kingdom

Respondent: Mr Kevin Adams  
44 Lincolns Mead  
Lingfield  
Surrey  
RH7 6TA  
United Kingdom

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

easytech.co.uk  
easytech.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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

16 December 2016 17:32 Dispute received  
20 December 2016 09:28 Complaint validated  
20 December 2016 09:29 Notification of complaint sent to parties  
11 January 2017 01:30 Response reminder sent  
16 January 2017 10:53 Response received  
16 January 2017 10:54 Notification of response sent to parties  
19 January 2017 01:30 Reply reminder sent  
23 January 2017 13:02 Reply received  
23 January 2017 13:02 Notification of reply sent to parties  
26 January 2017 10:12 Mediator appointed  
27 January 2017 14:49 Mediation started  
13 February 2017 14:51 Mediation failed  
13 February 2017 14:51 Close of mediation documents sent  
22 February 2017 17:19 Expert decision payment received  
06 March 2017 17:48 Sent expert decision pack, expert appointment and conflict check documents

### **4. Factual Background**

I find the following facts proved on the basis of the materials and submissions made by the parties and they form the basis of my decision:

- i. The Complainant is an investment vehicle owned by Sir Stelios Haji-loannou.
- ii. The Complainant owns a large number of brands which commonly use the word “easy” with a further element descriptive of some business enterprise, each becoming a separate brand, but linked by their use of the initial “easy” element.
- iii. The formula of “easy” and some other descriptive element has become a common brand for a wide range of businesses, first coming to prominence with the “easyJet” mark applied to a low-cost airline but applied since to many business enterprises in many different sectors including the hotel, motor car, fitness and property sectors (as well as many others).
- iv. The Complainant’s business is the ownership, protection and licensing of these various marks, which it does to other

companies in its company group and also to third parties on a franchising basis.

- v. The Complainant owns an EU trade mark for “easyTech” which was registered as of 29 March 1999, but it also owns a portfolio of other trademarks registered in respect of its many other brands, each incorporating the initial “easy” element.
- vi. Each of these separate brands has been extensively marketed online and each has become well recognised by the public as having some connection by virtue of the initial “easy” element in each brand.
- vii. The Respondent registered the first Domain Name on 5 July 2005 and the second Domain Name on 21 May 2016.
- viii. The Respondent has not used either Domain Name for any substantive business enterprise of his own, but did use the first Domain Name as a parking page, including for the purpose of carrying advertisements.
- ix. The Respondent has made at least some use of the first Domain Name for allowing advertisements relating to cheap flights as at 2013.
- x. The Respondent is not currently making any use of either Domain Name and has not done so since receiving correspondence from the Complainant’s solicitors.
- xi. As well as the Domain Names, the Respondent owns a number of other domain names, which correspond closely to brands or marks owned by third parties, and has in fact lost two previous decisions under the DRS Policy (DRS04288 and DRS06431).

## **5. Contentions**

The Complainant makes the following submissions:

- i. The Complainant company is registered in England and Wales and manages a portfolio of consisting of the “easy” brand.
- ii. Business is substantial at £13m a year.
- iii. All the brands consist of the word “easy” followed by a descriptive element.

- iv. The Complainant owns a large number of trademarks in relation to the various brands including a EUTM in respect of “easyTech” registered as of 29 March 1999.
- v. The Complainant has over 100 EU trade marks and more than 700 national trade marks, including in the UK.
- vi. The Complainant also owns domain names which are the same as its “easy” brands, and which it licenses to third parties.
- vii. The “easy” brands are used in the context of the supply of diverse goods and services, many of which are run on a franchise basis.
- viii. The first licensee was easyJet, now with revenues in excess of £5bn, but there are many others, and the portfolio is always growing.
- ix. The Complainant has spent significant sums in its advertising of its own licensing activities in the national press and elsewhere.
- x. The Complainant has substantial goodwill and reputation in the “easy” mark, especially when combined with another element: it is therefore highly likely that a member of the public would think that “easy” combined with another element was part of the Complainant’s brands.
- xi. The Complainant’s goodwill and reputation makes it likely that the Domain Name will be confused with its trademark.
- xii. The Respondent’s registration of easytech.co.uk is an Abusive Registration because it was registered on 5 July 2005, some 6 years after the Complainant registered its trade mark “easyTech” and 10 years after easyJet began operating flights.
- xiii. The Respondent would have known about other “easy” brands many of which were launched before the registration of the Domain Name.
- xiv. The Respondent registered the Domain Name to take advantage of the Complainant’s substantial reputation, which it would have been easy to verify at the Complainant’s portal site.
- xv. The Respondent registered easytech.uk on 21 May 2016 following correspondence from the Complainant, thereby indicating its awareness of the Complainant’s Rights.

- xvi. The Respondent only uses both Domain Names as parking pages containing advertising including links to rival cheap flight operators.
- xvii. The Respondent has lost two previous Nominet Decisions: DRS04288 and DRS06431.
- xviii. The Respondent also owns other domain names similar to existing trade marks or trading styles operated by third parties.

The Respondent makes the following submissions<sup>1</sup>:

- i. He contacted the Complainant in response to its threatening letter on 18 May 2016.
- ii. As with his other domain names, the Domain Name was parked to assess Google traffic.
- iii. On receiving the Complainant's letter, he unparked the Domain Name and removed it from nameservers, although it contained no advertising.
- iv. While he was aware of easyJet prior to registration, he was not aware of the connection to "easytech".
- v. Most people would not see a connection with easyJet.
- vi. The trade mark is registered in Classes 12, 37 and 39.
- vii. He registered the Domain Name on 2 February 2006 with the intention of using it with a personal IT support website, which is still his intention.
- viii. His current use does not infringe the Complainant's Rights or cause any disruption to its business.
- ix. The Complainant has no more right to the Domain Name than the Respondent.

The Complainant replies as follows:

- i. The Respondent has not challenged the Complainant's Rights or the association of "easy" with another element, of which "easytech" is part of the overall family.

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<sup>1</sup> The Respondent refers to the Domain Name in the singular, but I take it that the intention is to refer to both of them, apart from when referring to details relevant only to one of them (such as the date of registration).

- ii. It is not credible that he intended to use the Domain Name in connection with a website for a business of personal IT support, and there is no evidence to support it and it is a submission he has not made previously.
- iii. The Respondent has admitted being familiar with the Complainant's "easyJet" brand and it is inconceivable that he was unaware of other similar brands composed of "easy" and another element which were current in 2006.
- iv. The Respondent registered "easytech.uk" after being put on notice of the Complainant's Rights.
- v. There is no evidence to support the Respondent's contention that he intended to use "easytech.co.uk" for the purposes of a personal IT support business.
- vi. The Respondent has not used "easytech.co.uk" or made any demonstrable preparations to do so.
- vii. The Respondent has used "easytech.co.uk" for the purpose of hosting advertising for "cheap flights", bearing in mind that the Respondent had heard of easyJet.
- viii. The Respondent's ownership and use of other domain names indicates that he is familiar with making Abusive Registrations.

## **6. Discussion and Findings**

### **Rights**

Rights are defined in the DRS Policy to mean "*rights enforceable by the Complainant, whether under English Law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning*". Paragraph 2.1.1 provides that the Complainant must prove that it "*has Rights in respect of a name or mark which is identical or similar to the Domain Name*". The standard of proof is on the balance of probabilities (paragraph 2.2 of the DRS Policy).

In this case, the Complainant has referred to a large number of marks, but has included evidence of an EU trademark "easyTech", registered on 21 July 2000 and expiring on 29 March 2019. This is in fact absolutely identical with the Domain Names in this case barring the suffixes ".co.uk" or ".uk", which can be omitted from consideration under the DRS Policy.

There can be no question that the Complainant has shown that it has Rights in a mark identical to the Domain Names, as there is no difference at all.

### **Abusive Registration**

An Abusive Registration is defined in the DRS Policy as “a *Domain Name which either (i) was registered or otherwise acquired in a manner which, at the time of when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; or (ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant’s Rights*”.

Paragraph 2.2.2 of the DRS Policy requires the Complainant to show that the “*Domain Name, in the hands of the Respondent, is an Abusive Registration*”.

Again, the standard of proof is on the balance of probabilities (paragraph 2.2 of the DRS Policy).

Paragraph 5 of the DRS Policy sets out a number of non-exhaustive factors which “may” be evidence that the Domain Name is an Abusive Registration. The Complainant has not set out any specific paragraphs, but has given evidence which is relevant to the following paragraphs.

#### *Paragraph 5.1.6*

This is applicable when the Domain Name is an exact match for the Complainant’s Rights and where the Complainant’s mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Names.

There is an exact match here between the Complainant’s Rights in “easyTech” and the prefix “easy” and the Domain Names. The Complainant has shown that it has a reputation in the prefix “easy” when applied as the initial element with the following element describing some business sector.

The Respondent has not shown any reputation in either “easy” or “easytech”, and concedes that he had heard of “easyJet” when registering the first Domain Name. When registering the second Domain Name, he already knew of the Complainant’s assertion of its Rights following correspondence from its solicitors. Against this, he states that he intended to use the Domain Names for the purposes of setting up some sort of IT support business. He has not done so in six years and has not produced any evidence to show any serious intent to do so.

The Respondent also points to the particular classes under which the Complainant EU trademark is registered and asserts that his activities would not fall within those particular activities. In fact, the DRS Policy is not the same as an action for trademark infringement and it is not necessary to examine the particular classes in which a trademark is registered. It is sufficient to have regard to the words of the DRS Policy itself.

Having regard to the available evidence, I do not accept the Respondent's explanation, and I find the ground under paragraph 5.1.6 made out.

*Paragraph 5.1.3*

This paragraph requires the Complainant to show that the Respondent is engaged in a pattern of registrations which correspond to well known names or trademarks in which the Respondent has no apparent rights and that the Domain Names are part of that pattern.

The Complainant has produced evidence of the Respondent's registration of other domain names and shown that they correspond to other marks or brands. These include zonda.co.uk, toptrump.co.uk, prisma.co.uk, laconfidential.co.uk, anchorman.co.uk and anchorman.uk, greenparty.co.uk and morphy.co.uk. The Complainant has also shown that the Respondent has lost two previous DRS Decisions, DRS04288 (coutts.co.uk) and DRS06431 (dreamtime.co.uk).

The Respondent has not addressed these points at all.

The DRS Policy does not define what it means by a "pattern" but I conclude from the Complainant's evidence that the Respondent has made it his job to acquire domain names which closely copy or actually use third parties' names or marks. There is no obvious legitimate reason why he should do so, as he appears to have no interest whatsoever in these various domain names.

I find the Complainant has made out its case under paragraph 5.1.3.

*Paragraph 5.1.2*

This paragraph requires the Complainant to show that there are circumstances indicating that the Respondent is using or threatening to use the Domain Names in a way which has confused or is likely to confuse people or businesses into believing that he Domain Names are registered to, operated by or authorised by, or otherwise connected with the Complainant.



It is worth stressing that the Complainant only has to show “circumstances”, not actual proof of the Respondent’s intentions.

The Complainant has not shown any actual confusion. The question is whether there is the likelihood of any confusion. The Complainant’s brands are well established and extensively marketed online, and the Domain Names do not appear to have been used for any purpose other than existing as parking pages containing some advertising. I take account of the fact that, at least in 2013, the first Domain Name included advertising for cheap flights, and the Complainant’s earliest and perhaps best known brand is for “easyJet”. However, that is rather a jump from “easyTech” and the connection is not obvious. As the Respondent states, and I so find, he has withdrawn both Domain Names from active use and they are in fact both withdrawn from relevant nameservers such that a search for them shows that they cannot be found.

As against which, I have found other circumstances showing that the Respondent owned other domain names identical to third parties’ names or marks. The Respondent’s attempts to explain his ownership of the Domain Names as being for his private business purposes against a background of where he knew or must have known of the Complainant’s easyJet business, its extensive marketing online of its “easy” brands and his registration of the second Domain Name in the light of the Complainant’s objections to the first Domain Name all demonstrate that the Complainant has shown circumstances indicating that the Respondent is threatening to use the Domain Names in a way which is likely to confuse members of public.

On balance, I find that the Complainant has made out its case under this paragraph 5.1.2.

#### *Paragraph 5.1.1*

Under this head, the Complainant must show circumstances that the Respondent registered the Domain Names primarily as blocking registrations against a name or mark in which the Complainant has Rights (paragraph 5.1.1.2) or for the purposes of unfairly disrupting the Complainant’s business (paragraph 5.1.13).

As with paragraph 5.1.2, the Complainant has to point to “circumstances”, not actual proof of the Respondent’s intentions.

Based on the same circumstances as I considered under paragraph 5.1.2, I find that the Respondent has registered the Domain Names as blocking registrations in respect of the Complainant’s trademark in “easyTech” and has also done so for the purpose of unfairly disrupting

the Complainant's business. I do not accept the Respondent's assertion that he registered either Domain Name for the purposes of some as yet unstarted business in providing IT support, for which he has provided no evidence at all.

I find that the Complainant has made out its case under this paragraph 5.1.1.

### **Evidence that the Domain Names are not Abusive Registrations**

The Respondent has provided little material but I still considered under paragraph 8 of the DRS Policy whether he had shown that the Domain Names were not Abusive Registrations. I comment on the various factors as follows.

#### *Paragraph 8.1.1*

There is no evidence to suggest that the Respondent has made demonstrable preparations to use either Domain Name for any genuine offering of his services. The Respondent has not shown that he is using the Domain Names because any business of his is commonly known by that name. For the reasons given above, I find that the Respondent has not made fair use of the Domain Names, but has registered both of them to block the Complainant and unfairly to disrupt the Complainant's business.

#### *Paragraph 8.1.2*

The Domain Names might be considered generic or descriptive, but I have found that the Respondent is not making fair use of them. The Respondent's registration of the Domain Names falls into exactly the same pattern of registrations of other domain names (see my findings under paragraphs 5.1.3 of the DRS Policy above).

#### *Paragraphs 8.3 and 8.4*

While it is certainly true that the Respondent is entitled to have any domain name for the purpose of trading in it or earning money from advertising on it, he has not shown in this case that his use is justified or fair.

After considering everything in the round, I am satisfied that the Respondent has no reason to justify his keeping either Domain Name.

## **7. Decision**

I direct that both Domain Names be transferred to the Complainant.

**Signed** Richard Stephens

**Dated** 29 March 2017