

DISPUTE RESOLUTION SERVICE

D00022811

**Decision of Independent Expert
(Summary Decision)**

Kintail Bagpipe Makers

and

Whois Privacy Protection Foundation

1. The Parties:

Complainant: Kintail Bagpipe Makers
Grandtully Church
Grandtully
Aberfeldy
Perthshire
PH15 2EF
United Kingdom

Respondent: Whois Privacy Protection Foundation
Kipstraat 3 c
Rotterdam
Zuid-Holland
3011 RR
Netherlands

2. The Domain Name:

kintail.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with section 3 and 6 of the Policy.

Yes

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name kintail.co.uk is an abusive registration

No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes

7. Comments (optional)

The Complainant submits that Kintail Bagpipe Makers started trading in 1971 and their range of bagpipes was branded "KINTAIL". This was registered as a UK trademark on 20.04.1972 under registration UK00000990845. The trademark was later transferred to Sharp & Sharp (Bagpipe Makers) Ltd. The "KINTAIL" trademark lapsed on 20 April 2017 and Sharp & Sharp (Bagpipe Makers) Ltd ceased trading on 6 February 2018.

The Complainant asserts that this represents 45 years of using the name "KINTAIL" in association with manufacturing bagpipes as well as marketing and sales worldwide. Whilst other brand names were in use, the business was known and established under the trading name "KINTAIL".

In support of this assertion and its claimed rights to the KINTAIL mark, the Complainant has adduced the following exhibits show branding and marketing of the name "KINTAIL".

Exhibit 1 – what the Complainant states is an “invoice showing logo and domain name kintail.co.uk”. The name on the invoice is merely “Kintail”, the exhibit does not show the full invoice and is undated.

Exhibit 2 – described by the Complainant as a “retail price list with logo and domain name kintail.co.uk.” This is also undated.

Exhibit 3 – a photograph of a “shopping bag showing logo and domain name kintail.co.uk”. This is also undated and merely has the name “Kintail”, a physical address, a website URL and an email address.

Exhibit 4 –described as a “ company catalogue showing logo”: The company name is Sharp & Co. (Bagpipe Markers) Limited

Exhibit 5 – a copy of a document described as “a company logo and indication of trademark”: This states that “Kintail” is a registered trademark but the Complaint states that this registration has lapsed.

Exhibit 6 – a copy of a page described as a “company catalogue showing logo”. This is merely a drawing of a kilted man playing a bagpipe with the words “Bagpipes and Accessories by Kintail, The Master Bagpipe Markers”

Exhibit 7 – described in the Complaint as “historic marketing and information on extensive marketing” this appears to be an obituary of the late Greig Sharp (1939-2009) the founder of Kintail Bagpipe Makers._

Exhibit 8 – a website screen shot from 2005

Exhibit 9 – a document described as a “history of Kintail”. This is undated and it is not clear whether it is a published document or a brochure.

The disputed domain name was registered on 30 January 2020. It appears that there was an earlier registration.

The Complainant states but provides no evidence that a new registration for the trademark “KINTAIL” was filed on 21 June 2020 under registration number UK00003503056. This application post-dated the registration of the disputed domain name.

In Exhibit 10 the Complainant has adduced a letter dated 20 June 2020 stating that all rights to assets and intellectual property of Sharp & Sharp (Bagpipe Makers) Ltd were transferred to Mr Peter Weidig (trading as Kintail Bagpipe Makers). This was dated the day before the Complainant’s trademark application and also post-dated the registration of the disputed domain name.

Exhibit 11 is a Whois search result that shows that the disputed domain name was registered on 30 January 2019 and that the Registry was unable to match the registrant's name against a third party source on 16 October 2018.

Exhibit 12 is a screenshot of the website to which the disputed domain name resolves which is primarily in English but with some Spanish content, which purports to offer bagpipes for sale. The website has a copyright legend "Copyright © 2016 Kintail. Web Design by Fraser Web Design".

Exhibit 13 – is a document described as "confusion by customers in discussion forum". This document is presented with no context. There is no description of which discussion forum or its source. It has no probative value.

Exhibit 14 is what appears to be copies of an email exchange between the Complainant and a webdeveloper on 7 July 2020 relating to the domain name. The Complainant's email address is peter@ultraclean-systems.com.

There is not sufficient evidence that there were any rights surviving in the KINTAIL trademark on 20 June 2020, which is the date of the letter on which the Complainant bases its claim to rights in the mark. The Complaint states that Sharp & Sharp (Bagpipe Makers) Ltd which was the purported assignor of the rights to the Complainant, ceased trading on 6 February 2018 at which time the "KINTAIL" trademark registration had lapsed on 20 April 2017.

There may well be surviving trade mark rights in the KINTAIL mark which were capable of assignment by Sharp & Sharp (Bagpipe Markers) Limited in June 2020 but the Complainant has not provided any evidence of this sufficient to meet the burden of proof which the Complainant bears even in these uncontested summary proceedings.

The Complainant has also not adduced any evidence that the domain name is an Abusive Registration. As stated above, there is no evidence that the Complainant acquired any rights in the KINTAIL mark by assignment on 20 June 2020 because the Complaint states that the trademark registration had at that time expired and the purported assignor had ceased trading.

Additionally there is no evidence that the Complainant is using the mark so as to acquire or revive any goodwill capable of protection at common law. The documents which have been adduced as evidence of use are undated or refer historical use by third parties.

The mere fact that a domain name that resolves to an inactive website, or a website with inactive links is not in itself evidence that it is Abusive Registration in circumstances where the Complainant has not shown that he is carrying on any business relating to bagpipes.

8. Decision

I refuse the Complainant's application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: James Bridgeman SC

Dated: 2 August 2020