

## DISPUTE RESOLUTION SERVICE

DRS 7418

### Decision of Independent Expert

**Lauren Luke**

and

**Secret Network**

#### 1. The Parties:

Complainant: Lauren Luke  
Address: 13, Caspian Close  
Jarrow  
Tyne & Wear  
Postcode: NE 32 5UJ  
Country: GB

Respondent: Secret Network  
Address: PO Box 120  
Hounslow  
Postcode: TW5 9GN  
Country: GB

#### 2. The Domain Name:

laurenluke.co.uk (“the Domain Name”).

### **3. Procedural History:**

This dispute was entered into the Nominet system on June 25, 2009. A hard copy of the Complaint was received in full by Nominet that day. On June 26, 2009, Nominet validated the Complaint and took appropriate steps to notify the Respondent of the Complaint. No Response was received from the Respondent and Nominet so notified the parties on July 20, 2009. On August 5, 2009, the Complainant paid the fee to obtain the expert decision pursuant to paragraph 21 of the procedure for the conduct of proceedings under the Nominet Dispute Resolution Service (“the Procedure”).

On August 5, 2009, Alan L. Limbury, the undersigned, was selected as the Expert. On August 10, 2009, I confirmed to Nominet that I knew of no reason why I could not properly accept the invitation to act as Expert in this case and further confirmed that I knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question my independence and/or impartiality.

### **4. Factual Background**

Under her own name and under the brand “By Lauren Luke”, the Complainant appears regularly in her own make-up video tutorials on the YouTube channel [www.YouTube.com/Panacea81](http://www.YouTube.com/Panacea81) and in numerous other media, including a weekly column in the Guardian newspaper in the UK.

The Domain Name was registered in the name of the Respondent on November 19, 2008. It leads to a web site headed “Lauren Luke” containing links to the Complainant’s make-up video tutorials and to websites unrelated to the Complainant.

### **5. Parties’ Contentions**

#### Complainant

The Complainant, through her representative, says she is an internet phenomenon whose name is known by millions of people world wide. Since starting her YouTube video tutorials over two years ago she has had over 41 million views and now has over 260,000 active subscribers, fans and followers.

The "By Lauren Luke" brand was established in 2008 to identify the Complainant and her new make-up range, which she began selling through the website [www.bylaurenluke.com](http://www.bylaurenluke.com) in April, 2009.

The Complainant seeks the transfer to her of the Domain Name because the Respondent's registration of the Domain Name is blocking the name Lauren Luke to which the Respondent has no rights. The Respondent has no personal or commercial connection with the Complainant yet the website pretends to come from the Complainant herself, as her name and likeness are being inappropriately used for commercial gain. The sole purpose of the Domain Name is to profit through the sale of traffic. Although in itself this practice is not illegal, in this instance it should be considered as unfair usage and an abusive registration, which is unfairly disrupting the Complainant's business and severely impeding traffic to [www.bylaurenluke.com](http://www.bylaurenluke.com) as a result of which the Complainant's fans and consumers are confused and have emailed the Complainant about it, requiring her to tell her fans that [www.laurenluke.co.uk](http://www.laurenluke.co.uk) is a fake website and directing them to her official site, [www.bylaurenluke.co.uk](http://www.bylaurenluke.co.uk).

#### Respondent

The Respondent did not respond to the Complaint.

## **6. Discussions and Findings**

Under paragraph 2 of the Dispute Resolution Service Policy ("the Policy") the Complainant is required to show, on the balance of probabilities, that;

- (1) she has rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (2) the Domain Name in the hands of the Respondent is an Abusive Registration.

In the absence of a Response, asserted facts may be taken as established and reasonable inferences may be drawn from them.

### **Complainant's Rights**

“Rights” are defined in 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”.

The Complainant does not rely on any registered trademark. In order to establish rights in passing off, the Complainant must produce evidence proving that, prior to the filing of the Complaint, she has provided goods or services under an unregistered mark and thereby acquired a reputation such that members of the public would associate those goods or services with the Complainant and not with others not authorized by the Complainant to use the mark.

There is evidence that the Complainant has traded under her own name and under the name “By Lauren Luke”, as a supplier of make-up tutorials and make-up kits and has established a distinctive reputation in connection with make-up as a source of make-up products and services. She has therefore established that she has common law trademark rights in those names such as to entitle her to restrain use by others of those names to pass themselves off as the Complainant.

Since the Domain Name wholly incorporates the Complainant’s marks, I conclude that the Domain Name is identical or similar to the Complainant’s marks “Lauren Luke” and “By Lauren Luke”.

### **Abusive Registration**

Abusive registration is defined in the Policy as:

“...a domain name which either;

- (i) was registered or otherwise acquired in the manner which, at the time when the registration or acquisition took place, took unfair advantage of, or was unfairly detrimental to the Complainant’s rights; or
- (ii) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

Paragraph 3(a) of the Policy provides a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. Paragraph 4(a) of the Policy sets out a similar list of factors that may be evidence that a domain name is not an Abusive Registration.

In the absence of a Response, I accept the Complainant's assertion that she started her YouTube tutorials before the Domain Name was registered in November 2008, so it is possible that the Respondent had her in mind when registering the Domain Name. However, on the evidence it is not possible to conclude that the Complainant had established common law rights in her name or in the name "By Lauren Luke" by that time, since the <www.bylaurenluke> website did not go live until February, 2009 nor did the make-up kits go on sale until April 2009. Accordingly the Panel makes no finding of Abusive Registration under sub-paragraph (i) of the definition.

What is clear, however, is that subsequent to the Complainant having established common law rights, which the Panel finds to have been no later than early 2009, the Respondent's web site has been attracting traffic from visitors knowing of and expecting to find the Complainant or her products. The Respondent's website content makes it clear that the Respondent, knowing of the Complainant and her reputation in the field of make-up, is using the Domain Name in a way which has confused such visitors into believing that the Domain Name is registered to, operated or authorised by, or is otherwise connected with the Complainant.

Under paragraph 3(a)(ii) of the Policy, such circumstances are evidence that the registration is an Abusive Registration.

I therefore conclude that the Domain Name is an Abusive Registration in that it has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

## **7. Decision**

I find that the Complainant has proved, on the balance of probabilities, that she has rights in a name which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. I therefore direct that the Domain Name be transferred to the Complainant.

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Alan L. Limbury  
August 18, 2009

